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AUTHOR Vicenti, Dan; And Others
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ABSTRACT

Volume 4 of a 4-volume bilingual bicultural law-related curriculum examines Navajo community life as it is affected by certain laws. Getting a job, obtaining assistance from welfare and other agencies, and preserving one's individual rights as an employee or as a student are all aspects of daily living with important legal ramifications. This unit explores each of these relationships, as well as important laws that help to shape them. Some of the laws discussed are Social Security, workmen's compensation, unemployment compensations, the food stamp program and other government health and child care programs, as well as child employment regulations in the State of New Mexico. The casebook contains examples of actual instances which are to be utilized in teaching this unit, but it is also suggested that the teacher write the Employment Security Commission and other Federal and State agencies to get forms and applications to be used in the classroom as teaching aids. Video tapes on food stamps and on the fair hearing process are available from the Ramah Bilingual Project (New Mexico), and should also be used in conjunction with this unit. (AH)

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The Law of The People

DINÉ BIBEE HAZ'ÁÁNII

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A Bicultural Approach to Legal Education For Navajo Students

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BY
DAN VICENTI
LEONARD B. JIMSON
STEPHEN CONN
M.J.L. KELLOGG

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VOLUME IV

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RAMAH NAVAJO HIGH SCHOOL PRESS

T H E L A W O F T H E P E O P L E

DINÉ BIBEE HAZ'ÁANII

A Bicultural Approach to Legal Education
for Navajo Students

by Dan Vicenti
Leonard B. Jimson
Stephen Conn
M. J. L. Kellogg

RAMAH NAVAJO HIGH SCHOOL PRESS

Ramah, New Mexico 87321

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THE NAVAJO NATION

Window Rock, Arizona, 86515

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FOREWORD

The Navajo people have long been ensnared in a legal web. Contact with the Anglo-American economic system which has become necessary for the Navajo people has brought a concomitant involvement in the confusing and, often contradictory, Anglo legal system. The Anglo legal system, for instance, in the areas relating to commercial transactions, has many aspects that are substantially different from the simple and effective traditional norms which have served the Navajo people extremely well for hundreds of years.

As a result of this confluence of legal systems, many Navajo people are at a serious disadvantage in dealing with Anglo merchants, car dealers and traders. In their dealings with these Anglo businessmen, most of the Navajo people are unaware of the pitfalls and the protections that are present in the Anglo -American legal and commercial systems.

It becomes increasingly important that the Navajo people understand the Anglo system and its relationship to our traditional Navajo "common law". To a large extent, the responsibility for acquainting all of our people with these matters rest with our young people. This excellent textbook clearly and simply shows many of the problems and difficulties which face the Navajo people when they deal in the Anglo system. It also indicates effective means for countering these dangers, and outlines the protections afforded by the Anglo legal system. This text and the course of study it envisions are important additions to our educational systems. I commend this instruction and I am confident that it will prove of great benefit to the students and to all Navajo people.

Peter MacDonald, Chairman
Navajo Tribal Council

INTRODUCTION

This book is intended to be a source book of the traditional and modern law that affects Navajo people today.

It is hoped that teachers will use it as the basic instructional text in classes on legal education and Navajo culture in secondary schools and colleges.

Furthermore, we believe that it will serve as a useful text for lay judges, lay advocates, police, social workers, and other people who deal with Navajo people and their problems. We believe that the material in this text will give these people new insights into Navajo social and business relationships, and especially the impact of law and tradition upon those relationships.

The paraprofessional advocate is taking on new roles in the Navajo Nation and in other Indian court systems. He will not only represent clients in court, but will help to conciliate their disputes. He will also enter the classroom and assist teachers in instruction about modern law, traditional legal ideas, and the problems of students and their parents.

For paraprofessionals of other cultural traditions, this text and the methodological approaches embodied in the interviews published here will direct them in the better performance of their present tasks and in the assumption of roles that are uniquely theirs.

Stephen Conn
Consulting Attorney

LAW AND COMMUNITY LIFE

LAW AND COMMUNITY LIFE

Getting a job, obtaining assistance from welfare and other agencies, and preserving one's individual rights as an employee or as a student are all aspects of daily living with important legal ramifications.

This unit will explore each of these relationships, as well as important laws that help to shape them.

Note to Teachers on Additional Classroom Materials

Teachers should write to the Employment Security Commission of New Mexico or Arizona for an employment application and for an application for unemployment benefits for use in the classroom.

The Railroad Retirement Board, Gallup, New Mexico, will provide pamphlets and other materials on railroad work and benefits.

The local Social Security office will provide pamphlets and other information on Social Security matters.

Various welfare application forms may be obtained from Bureau of Indian Affairs and state welfare offices.

Detailed information on minimum wage laws of the federal government may be obtained from the Wage and Hour Division of the Department of Labor.

Video tapes on food stamps and on the fair hearing process are available from the Ramah Bilingual Project, Ramah, New Mexico 87321.

GETTING A JOB

Most states have rules about the minimum age at which a student or other young person can get a job. They also have laws to protect persons from unsafe conditions at work and that set minimum wages for all workers.

Navajo people travel far and wide working at migrant work, railroad work, and even work in factories and stores in larger cities in the southwest, far west, and midwest. It would be nearly impossible to list all of the different laws of each state. The important thing to remember is that students should help their parents and brothers and sisters ask for information about the state laws that help them. They should know what rights they have if they become unemployed when their job ends or if they are sick or hurt on the job. Finally, there are some kinds of jobs that are risky for the young Navajo woman. These jobs are "mother's helpers" in large cities are especially dangerous because the Tribal newspaper, the Navajo Times, makes no effort to follow Tribal law and to ask for questions from the employers about their incomes or security for the girl who goes there to work.

The law says that your boss must set up regular paydays not more than sixteen days apart. If he lets you go, he must pay your wages within five days.

If he doesn't pay, the employee should bring a civil action within sixty days of the time he was let go from his job.

These time limits on legal rights described are taken from New Mexico law, but every state has limits like this. They are important because a delay may mean that you lose everything. Time limits on legal rights are there to keep from taking place after people have forgotten the facts of the problem. Also, they separate the serious people from those who decide years later to try and get money from the boss. Another reason for these time limits is that they work in the favor of employers who have more friends in the state legislature than the working people do. These are the facts of life.

Suppose you quit. Can you get your pay right away? No; the law only requires that your boss pay you what you are owed by the next payday.

Employers must keep accurate records of the time that you work for them and of the wages paid you. It is important that they pay social security taxes and take out your share.

The state of New Mexico and other states have labor commissioners who can take wage claims and collect them for you. A lawyer can also help.

Must people who work fight their battles alone? You probably have heard the term, collective bargaining. It means that employees get together and decide what they want and then go and strike for it. It means that they stop work until they can bargain for better pay and working conditions.

An organization of employees is called a union. This means that only people who join the union can work there. Some states do not allowed closed shops. But unions, the right for workers to get together to bargain collectively, and the right to strike are legal everywhere (except for people who work for the government, although they have associations that can complain, too. Some places allow teachers to strike, and in some cities, policemen and firemen strike even when the law says they cannot.)

People may ask, is it fair to keep a man from a job just because he will not join a union? This depends on how you look at the problem. Most people face the situation that their job is something they depend upon. They buy things on credit, because they believe that they will have a job so that they can make payments later on. If they do a good job, is it fair that the boss should hire someone else who says he will work for less?

Job security is one goal of unions. Unions were first important to the Anglos when they were trying to protect their jobs from people who came from other countries and who were willing to do the same jobs for less pay. Now, many professional people belong to the unions; teachers and engineers, for example, now look to unions when they see that they have no job security.

The Navajos who do migrant work in Colorado found problems there when the farmers began to hire Mexicans who would work for less because they were in this country illegally and could not afford to complain about their low pay or they would be sent back to Mexico.

Now the Navajos are getting together on the Reservation so that an individual cannot be thrown out of work after he has taken a long trip to get the job, just because a person who says he will work for less money comes along. This is what collective bargaining is about.

State labor laws protect children and others who may be hurt by poor conditions that some jobs force them to work under. The New Mexico laws will be reviewed here as an example. Most states have laws that differ only in details, but that are equally concerned with the same subjects.

Unless he has a special certificate, no child under sixteen can work when school is in session. This is different from the days when Navajo children herded sheep from the time they could walk. Now Navajo people see education as a benefit.

The state laws limit the hours and ways a child or a young person can work.

Children and Work in New Mexico

Principals and school superintendents can issue papers to let school students work during school hours if it is found that the job is safe for his health and morals. The student must be in good physical health. If the student is between fourteen and sixteen years old and wants to work for money, he must have a certificate describing the need of his family to have him work. These papers are good for six months. The school principal or superintendent keeps one copy and sends the second one to the state industrial commission. The state sends an inspector to look at the work conditions of the young person.

When a Person is Out of Work

Suppose your father has a job in Gallup with a construction company. He makes good money and has been working for quite a while, but the foreman comes around and tells him that three employees have to be let go to make ends meet. What should your father do?

The state of New Mexico (and every state) has a fund that most employers contribute to. People who are out of work and who are able to work and try to find work can be eligible for unemployment compensation from this fund. After one week of unemployment, a person can make an application at the state employment commission's nearest office. He must go to this office each week he is unemployed, and tell them that he is out of work and looking for a job. The amount of the money he will get for about a year will be figured on a percentage of the highest amount he earned during the time that he was working. This way of figuring is very complicated.

If a person thinks he is eligible for compensation when people have told him he is not, or if he thinks he should get more compensation than he's been getting, he should get a legal services or legal aid attorney or lay advocate to look into the situation. A hearing is possible, just as in welfare problems.

Because some employers do not pay into the fund, some employees are not eligible for unemployment compensation. Who are these employees? The important ones for Navajos to know are:

1. Agricultural workers
2. People who work for the state or federal government
3. People who work for colleges or universities
4. Students
5. Railroad workers who get unemployment help from their own agency, the Railroad Retirement Board.

Can people garnishee unemployment benefits? No; the only one who can get unemployment benefits from a husband

are his wife and family members who need the money to pay for household necessities, or creditors who are owed money for household necessities.

Workman's compensation is a special fund to pay for partial or total disability caused by injuries that happen on the job. When the injury is reported to the boss, he must file a report with the state. If he doesn't do this, the employee must file a claim within one year from the date of the injury.

In a civil action for injury, the workman has to prove that he is not at fault; and he also must prove that the boss or other workers did not use ordinary care, and that this created the conditions that resulted in the accident.

The chief benefit of the Workman's Compensation Law is that it does not allow the boss to get out of paying because the workman did not use due care. It provides for "absolute liability" (complete responsibility) on the part of the employer. In this way the law is like traditional Navajo ideas about injuries. The bad thing about workman's compensation is that it does not provide an amount of money that is anywhere near as high as the damages a workman can collect in court when the accident was no fault of his own. It keeps the payments low for accidents that could have been prevented if the employer had given more consideration to such things as conditions in the shop, the tools used, and the special safety equipment needed by the worker. (Compensation is increased under New Mexico law if the employer fails to provide safety devices, but is not increased to the extent that a jury would award damages in many cases.)

All conflicts over facts or the law in workman's compensation cases are heard by the court.

The workman must show that the injury came about as a direct and natural result of his accident, and that his accident had to do with his employment.

He must notify his boss of the accident and injury within thirty days of when it happened, unless the injury and other good reasons kept him from doing it. Then he has no more than sixty days to report. But no written notice is necessary when the superintendent or foreman or other person in charge has actual knowledge that the accident and resulting injury happened. Just telling of

an accident or an injury may not be enough.

A Navajo working for a refrigerator company in Arizona slipped on some vegetables on the floor and hurt himself. The foreman was there. But the foreman later lied and said he did not see or hear of any accident. To be on the safe side, you should encourage relatives who are hurt on the job to put written claims in within the limited period of time, and to keep a copy of that paper. The paper should tell the date, the place of the accident, and describe the injury. It should tell how the injury is related to the person's work. Even if the injury seems small at first, it is best to get the claim in on time. The injury may get worse later on.

The employer will begin to pay the worker a month after the report, and then every two weeks after that, until he has paid the amount established to be owed.

Suppose the boss does nothing about it? If the employer does not pay, the worker has one year from the first date he was supposed to be paid to file his own claim. If he continues to work for the boss, he has that time of employment and the one year (up to two years in all) to file.

Suppose the workman dies? Then his dependents or their legal help must give the notice of the accident and injury to the boss (if the boss doesn't know about them) in order to get these payments.

How does the workman file a claim? He files it like a civil case in court (John Yazzie, Plaintiff, versus Atomic Mines, Inc., in district court). The court clerk sends out copies of the claim to the company by certified mail, with a summons (order) to answer the claim in court if the matter is not settled within thirty days.

The disabilities that are paid for last more than seven days. The rate of payment for total disability is a percentage of the average earnings. The payment for lesser injuries depends on the injuries and is calculated according to the number of weeks of payment. This table of payment is set by the state legislature the people who are elected by voters such as you. If you think the amount for various injuries is too small, it may be because the working man's interests are not being represented as well as the interests of the employers are.

The federal and state minimum wages help to see that employers pay their workers at least the basic wages that they deserve.

Do you work for a restaurant, cafe, or drugstore? In a place that launders or cleans clothes? In a hotel or motel or tourist court? In a service station or a bakery? Then the New Mexico state minimum wage of $1.30 an hour applies to you as long as your boss pays four or more people. If you work by yourself or with the manager, the law may still apply to you since your boss or the company may have other stores or courts or stations in other places. Most other employees can get $1.60 an hour under state law.

Maids, executives, or people who work for the federal, state, or local government are not included under this state law. Neither are people who work for charities or church organizations or non-profit groups. Salesmen who get paid for what they sell, and students who work after school and on their vacations are also excluded.

People who live in New Mexico and do agricultural work in New Mexico may be able to demand $1.30 an hour for their work, but, again, there are some exceptions.

If a person's boss is a member of his immediate family, he can't get this minimum wage by law; and if the boss doesn't hire one or more people who work more than five hundred work days in the year, the minimum wage law doesn't apply to the people who work for him.

There is <u>no</u> minimum wage law in the state of Arizona.

If you are employed to do farm work only on a piece-work basis, or come from your regular home to the farm every day to work and don't live at the farm, or are working with one of your parents there, or worked less than thirteen weeks at farm work in the previous year, you do not get this legal right to a minimum wage. Also, people who work on the range production of livestock are not included under minimum wage laws.

What if the boss provides meals and housing? He can deduct a reasonable amount for them. What is a reasonable amount?

For room and board per week	$10.00
For room per week	4.00
For meals per week	6.00
For meals per day	1.00
For single meals	.40

Suppose you earn more than twenty dollars in trips from working in a restaurant in Gallup each year. Do they have to pay you $1.30 an hour? Yes; but the boss can keep a record and count half of the minimum wage as coming from your tips.

Mary Yazzie is working as a maid in the Yucca Motel in Gallup, along with three other employees. The boss has been giving her $1 an hour all during 1971 for working eight hours a day and forty hours a week. She didn't know about the minimum wage until her friend told her last week. Can she get the extra money? If so, how?

The employer, her boss, may be guilty of a criminal misdemeanor. A criminal action can be started by the state employment office after an investigation. The state labor commissioner gets help in this from the local district attorney. Because the local investigator's office is kept understaffed by a legislature that is not very interested in this law, a complaint is usually acted upon very slowly. When some Shiprock Navajos who were hotel employees off the Reservation put in a complaint to the Gallup office, they waited for months and months for something to happen.

The best approach is to take the case to a legal services or legal aid lawyer or to a private attorney. The employee has a right to the money she did not receive plus the same amount of money as damages. She can get double the money she did not receive when she was supposed to.

Mary Yazzie can have the attorney sue for her, or all of the people who work at the Yucca Motel can sue together. The boss will have to pay the court costs and reasonable fees to the lawyer if Mary Yazzie wins.

Can the boss make you work more than sixteen hours? If you are a policeman, a fireman, or a farmhand, he can. You will, of course, get time and a half for overtime if you work more than eight hours.

Other people can't be made to work longer, even for overtime. If the boss tries to make them, he can be prosecuted for a criminal misdemeanor.

Why is it that farm workers do not get complete protection under state minimum wage laws? Why are there other groups of people who don't get it either? Is it fair? The law for minimum wage in New Mexico is not very fair. It is passed because the politically powerful people in the state are not people who are maids, do migrant work, or work in service stations, or who herd sheep. Many Navajo people earn money doing these things, but in the years when they have had the vote, they have either not registered or voted or have let the trader or local Anglos tell them which way to vote. If you vote for a state senator or representative who goes to Santa Fe and votes to keep farm workers who herd sheep from getting minimum wage help, then is he protecting your interest or the interests of Navajo people in New Mexico? Or is he protecting the interests of the big Anglo ranchers and farmers in New Mexico? Think about it.

Federal law has some minimum wage statutes too. They apply only to people who are "engaged in commerce and who produce goods for commerce." These individuals can work in any state of the country, and on the Navajo Reservation or other Indian land. The minimum wage laws of the federal government, when they apply, apply everywhere.

Generally, the minimum wage for people in the above category is $1.60 an hour. If this amount under the federal law is higher than the minimum wage under the state law of New Mexico, Utah, or any other state, it is the higher federal rate that applies to the job. If a person is employed in an agricultural job, then the rate is $1.30 an hour.

Suppose you go from Torreon to San Jon and pick broom corn. Does the federal law apply to you? No; because you traveled within one state only. The New Mexico minimum wage law applies here, but it is also $1.30 an hour.

Suppose you go from Shiprock to Colorado. Does the federal law apply to you? Yes; because you crossed a state line.

Suppose the farmer gives you food or housing. Can he deduct for this? Yes; he can deduct a reasonable amount for this. But the federal government has inspectors to

see that the housing and food are decent. Many farmers complain that they cannot hire Navajo people because the inspectors require housing that is too good. The farmers say that the housing cannot be kept up in good condition because it is vandalized by families who live there. However, these same farmers can take income tax deductions for these expenses. The laws are to protect Navajo people, such as those who have been forced to live in railroad box cars simply to earn a living. These farmers also get subsidies, or cash payments, to help them stay in business. Navajo workers get none of this.

Does the federal law apply to a waitress in Gallup? No; state law applies. Does the law apply to a restaurant on the reservation? No; there is no minimum wage law that applies here. The tribe should pass one.

The federal law provides that people who are not paid the right amount of money can get the amount they were not paid, plus the same amount again as damages. Does this apply to failure to pay overtime? Yes; you can recover double the amount of this, as well.

An action to receive unpaid wages must usually be brought within two years, but three years of back wages can be collected if the employer willfully (intentionally) did not pay the right amount and this can be proven in court.

The worker should file a complaint with the Wage and Hour Division of the Department of Labor. An attorney can help him do this. The Secretary of Labor and his employees can file a suit to collect the wages for the individual worker and for all his fellow employees, as well.

Can a man from Shiprock go to Utah and herd sheep and be covered? No; herding sheep, and most of the other jobs listed as exempt from the state law are also exempt from the federal law.

But this should not stop you from asking an attorney to study the law if you have any questions about it.

Social Security

When you work, you give your boss a Social Security number. If you don't have your card, get one. If your boss says, "That's okay; you don't need to give me the number," watch out. The pennies you save when they're not deducted from your check may stop you from getting social security later on, when you are old or get hurt.

Many people receive social security on the Navajo Reservation. You are eligible for full social security retirement benefits if you are a man or woman sixty-five years of age or over who has at least two years of work credit.

Work credit is earned for time worked. To earn work credit, you must be paid at least $50 in each three-month period, and at least $400 altogether in a year. A person who does farm work gets one-fourth of a year's credit if he earns at least $100 altogether throughout a year. A person doing farm work gets a full year's work credit if he earns $400 in the year.

If you get one and a half months of work credit in the three years before you retire at the age of sixty-five (sixty-two for a woman), you are eligible. Otherwise, the total credit you have is added up over the history of all the years you worked when social security deductions were taken.

Very old people need less work credit to get social security. A person who is seventy-six years old in 1972 will need just credit for three-quarters of a year. One job with social security deductions taken out may be enough. Other people in their seventies need just a little more.

Disability

People who become disabled and cannot work get money from Social Security for themselves and their children after they are disabled for seven months. If a person applies for benefits within a year from the disability and shows medical evidence of his disability, he can get this check for the rest of his life.

Being disabled means being severely hurt, mentally or physically, so badly that a person cannot work in his regular job; and the injury must be bad enough to last or to have lasted for at least twelve months.

You need different work credits to get this help. The amount of work credit needed to qualify depends on your age. If you are young, and under twenty-four, you need one and a half years of work credit in the last three years before the disability happened. If you are between twenty-four and thirty-one years old before the disability, then you need work credit for half of the time between when you were twenty-one years old and your present age. The amount of money you get depends on your average earnings.

Who Else Can Get Social Security

Workers and their wives can get it from the time they are sixty-two years old. The benefits are higher for people who wait until they are sixty-five to receive them.

Widows can start getting benefits at age sixty. Disabled widows can start at age fifty.

Relatives of workers who retire, become disabled, or who die can receive checks of their own:

1. Unmarried children under the age of eighteen, or until they are twenty-two if they are full-time students.

2. Unmarried children eighteen and over who are disabled.

3. A wife or widow of any age who is caring for a child under eighteen years of age, or who is disabled.

4. A wife sixty-two years old, or a widow sixty years old or older.

5. A widow fifty years old or older who becomes disabled not later than seven years after she is entitled to benefits because she cares for a minor child, or

not less than seven years after the death of her husband.

6. A husband or widower sixty-two or older who has depended on his wife for more than half of his income.

7. Parents sixty-two years old or over who depended on the earnings of a child who died for more than one-half of their needs.

8. A divorced wife at sixty-two, a surviving divorced wife at sixty, or a disabled surviving divorced wife at fifty. The divorced woman must show that she was married for twenty years.

Dependent wives or husbands are eligible for retirement or disability help as soon as their mate is eligible for these benefits, if the marriage lasted at least a year, and if they had a child.

If the husband or wife getting the benefits dies, the couple has to have been married at least nine months for the benefits to continue for the surviving mate. If the mate dies in military service, the marriage has to have lasted at least three months.

The problem of proving marriage is extremely difficult for many Navajo couples. Common law marriages, just living together, has not been accepted by the Tribal Code for marriages taking place after January 31, 1954.

Summary

People get social security checks for three basic reasons:

1. A worker dies.

2. A worker reaches retirement age.

3. A worker becomes disabled, and they are the worker or his dependent.

The benefits depend on special relationships to the worker; and unless, for example, the wife or widow is old or a child is disabled, the benefits stop when that relationship is ended by such things as remarriage, death of the person getting the check, or the child becoming over-age, or the child is no longer cared for by the widow of the worker.

Some Questions About Social Security

THE RULES SEEM COMPLICATED TO ME. SUPPOSE I DO NOT LEARN ABOUT MONEY I CAN GET UNTIL SEVERAL YEARS HAVE PASSED? Usually, when you apply and are approved, you will get the benefits that are owed to you since you became eligible for them in one lump sum. The Social Security people suggest that people who are nearly sixty-five apply a few months in advance, so that the benefits will begin as soon as they turn sixty-five. But many Navajo people do not hear about these benefits until they are sixty-six or sixty-seven, or even older. When these people apply and are approved, they will get the back payments in one lump sum, along with regular payments after that.

THE FORMS I HAVE SEEN SEEM VERY HARD TO FILL OUT. CAN SOMEONE HELP ME FILL THEM OUT? Yes; you can have a lay advocate help you and represent you in the fair hearing if you are turned down. But you must submit a signed and sworn statement that he is your legal representative to place in the files of the Social Security office. If you get a licensed attorney to help you, this statement is not required.

SUPPOSE I AM DENIED SOCIAL SECURITY BENEFITS? IS THAT THE END OF THE ROAD? No; your legal representative can ask for reconsideration and for a fair hearing to present further evidence on your side. He can also send more written evidence on such matters as your age, your marriage, your health, and so forth, to higher offices of the Social Security Agency.

SUPPOSE NO ONE WILL CHANGE THE DECISION IN THE CASE? Then a lawyer can have the court review the administrative findings for large mistakes or for the unfair way that the procedures were carried out. The lawyer may argue that the rule of the Social Security Administration is wrong, because it discriminates against you or other

Navajo people, or because it goes against the wishes of Congress when they made the rules, or, finally, because it goes against the supreme law of the land, the United States Constitution.

The Procedure for Social Security Applications

1. Initial determination. If you don't like this decision, you have six months to ask for a reconsideration.

2. Reconsideration. If you don't like this, you ask for a hearing within six months.

3. Hearing with a hearing examiner. If his decision is against you, you can ask for a decision of the Appeals Council within sixty days.

4. The Appeals Council makes a decision that can be reviewed by filing a civil action in the U.S. District Court within sixty days.

How do you get reconsideration? You ask for it in writing at the local office of the Social Security Administration. A hearing is requested in the same way. The hearing examiner was not involved in the original decision. He will hear evidence on both sides and keep a written record of the case. His decision may or may not be reviewed by the Appeals Council in Arlington, Virginia. A person can go to Virginia or send written evidence there. Even if the Appeals Council does not hear the case, it can be taken to U.S. District Court.

Like welfare, social security is the legal right of those who can prove that they qualify. It is not a charity. It is earned, and the law provides ways for reviewing the acts of the workers in the Social Security offices to see that the rules are fair and that they are applied fairly.

Medicare and Navajo People

Because Navajo people are entitled to free medical care at the Public Health Service Hospitals on the Navajo Reservation and in large cities such as Albuquerque, many older Navajo people do not think that the free medical help called medicare is important to them. They do not

enroll in the medicare program. However, many of these same people become dissatisfied with the care in the PHS hospitals and go to private doctors and hospitals. Medicare can help older people get special treatment without paying for it.

What is Medicare?

You do not automatically get medicare. You must sign up. Nearly anyone sixty-five years old or over can sign up. You get a special red, white, and blue card. The hospital insurance covered includes:

1. Ninety days of hospital care

   a. Sixty days in the hospital (except for the first $52 it costs)

   b. Thirty days in the hospital (except for $13 a day)

   c. Up to one hundred home health visits by nurses after your release from a three-day stay at a hospital.

2. There is also a low-cost medical insurance to cover many other kinds of services by hospitals and doctors. This is available to people sixty-five and over. It costs about $4 a month. After the first $50 in costs, it pays for 80% of the costs of services.

ARE THERE OTHER WAYS I CAN GET MEDICAL BILLS PAID FOR WHEN I MUST LEAVE THE PHS BECAUSE THE DOCTORS THERE DO A BAD JOB, OR DON'T HAVE THE SERVICES THAT I NEED? Yes; if you must go to another hospital as an emergency, or if it is clear that PHS does not have the kind of specialists that you need, or is incapable of providing the services that you need, the PHS should pay for your bill.

The PHS will usually do anything it can to get you treated in its hospital. But when they don't treat you, a lawyer can help you get the PHS to pay when the private doctor or hospital sends you a bill.

SUPPOSE THE PHS DOCTORS DO SOMETHING WRONG THAT KILLS A RELATIVE? There is a civil action that can be taken against professionals for mistakes that no reasonable doctor, lawyer, or engineer would make with his training. He is supposed to act in a more skilled manner than a man without his training.

The civil action that can be taken against doctors is called malpractice. It is not easy to prove in court, since the fact that your relative was not helped or died is not enough. You must show how the doctor's mistakes created this situation. Also, other doctors are sometimes reluctant to testify against their professional brothers. The same problem exists when lawyers do a bad job. Other lawyers and judges are reluctant to blame the lawyer, since in every case like this one lawyer will lose.

This cloak of professional self-protection is not a healthy thing. It keeps the professions from removing those doctors, lawyers, or others who give everyone a bad name.

Proof and Navajo People

Review the list of kinds of evidence that the Social Security office wants for age, marriage, death, and other things. What problems do you see for Navajo people in obtaining these kinds of proof?

What kind of proof do your parents or grandparents have that they are the age they are? --that they are married? --that they are supported by one of their relatives?

How can you help them get the correct papers and records prepared now so that they will not have problems in the future?

1. Census records should be checked for correctness.

2. Marriages by custom should be registered.

3. Sworn statements by other old relatives about people's ages should be prepared and saved.

WORKING ON THE RAILROAD

An important job for older Navajo men has been work for the Union Pacific Railroad or the Santa Fe Railroad in the western states. The Railroad Retirement Board has a special office to serve the Navajo population in Gallup. The Railroad Retirement Board also continues to use traders as the forty-eight Special Unemployment Claims Agents.

These agents, as you saw in your review of the section on traders, receive calls to hire a group of men, and then they go out and get them. The men hired usually pay the trader to be taken to the shipping-out point.

The complaints voiced to the representatives of the railroads and the Railroad Retirement Board at Torreon in 1969 that the trader only bothered to hire men from families that owed him money and that he "blacklisted" people who complained about his high prices or the way he treated Navajo people resulted in little change.

Although the Railroad Retirement Board began to work with the Navajo councilman at Torreon in hiring workers from there, it continued to use traders everywhere else. These government workers and railroad representatives say that no Navajo can do the job for the little bit of money the trader makes directly from doing this work. They admit that the trader makes extra money by charging for rides to the shipping-out points (where the railroad provides transportation, the cost of which is deducted from the workers' paychecks), and from the business he attracts to his store.

No one has tried to get help from the federal government or the Tribe to pay Navajos to do this job. The Railroad Retirement Board continues to deal with white employees, when there are many well-qualified Navajo people (teachers, CAC workers, and lay advocates, to name a few) who could take on this job in order to attract younger Navajo men to this well-paying work.

The Navajos who are members of the Railroad Union have also received little support from it. The Union had an individual investigate the role of Navajo Legal Services in "promoting" the complaints in late 1969-1970.

It did little to represent the Navajo people who spoke at Torreon and who wanted work on the railroad.

The year 1972 finds the average age of Navajo railroad workers getting older and older. This indicates that young Navajo men are not learning about and applying for these jobs, because they do not deal with the traders as much as in the old days, and consequently do not owe them money.

Railroad employment, however, still has benefits that the student should explore before he takes other lower-paying jobs in Gallup or other cities, or does migratory work. These benefits are:

1. Unemployment compensation when there are no railroad jobs for him, even though he wants to work.

2. Sickness benefits that are better than workman's compensation in some other jobs.

3. Retirement benefits.

Some Questions and Problems about Working on the Railroad

MY BROTHER HAD A FIGHT WITH THE TRADER OVER HOW MUCH HE OWED ON HIS BILL FOR GROCERIES. THE TRADER TOLD HIM TO STAY AWAY FROM THE TRADING POST. NOW WHEN THE TRADER GETS A CALL FOR TWENTY MEN, HE DOES NOT CALL MY BROTHER. WHAT CAN HE DO ABOUT THIS? This practice is called blacklisting, and it is illegal. Your brother should report the situation to the Railroad Retirement Board in Gallup. He should also tell the Tribal Councilman. If the Chapter has many people who are in this same situation, they should pass a resolution and ask that the trader be replaced with a Navajo who can treat people who want jobs fairly. A lawyer or lay advocate can also help your brother go to court and bring a civil suit against the trader for interfering with your brother's right to get a railroad job. If the trader reports falsely to the Railroad Retirement Board that he is not hiring your brother because he is undependable or is drinking or has another job, your brother has a right to present evidence to the Board to contradict these statements and to show the real situation. He can also get damages in money from the trader in a civil tort action if he can prove that the trader intentionally

lied in order to keep your brother from working on the railroad.

MY FATHER AND SOME OTHER MEN PAID THE TRADER TO TAKE THEM FROM HERE TO THE RAILROAD BUS AT SHIPROCK. ON THE WAY, THE TRADER HAD A BLOWOUT AND TWO MEN WERE KILLED. DO THEIR FAMILIES HAVE ANY LEGAL RIGHTS FOR MONEY DAMAGES AGAINST THE TRADER OR AGAINST THE RAILROAD RETIREMENT BOARD? The families of the men who were killed may be able to bring wrongful death actions against the trader, since they paid him, and as a result of his conduct people were killed. They should get a lawyer to help them go to court.

The liability (fault) of the Railroad Retirement Board is a second matter. If the lawyer can show the court that part of the trader's job for the railroad agency is also to get the men to the shipping out points, then he acted as the agent of the Railroad Retirement Board (just as the car salesman acts as an agent of the car dealer when he sells you a car). In this case, the Railroad Retirement Board shares the responsibility and is also liable to pay.

MY BROTHER WAS WORKING ON THE RAILROAD. HE GOT WORD THAT OUR GRANDFATHER HAD DIED AND HAD TO LEAVE. HE DOES NOT SPEAK ENGLISH WELL AND SO COULD NOT EXPLAIN IT TO THE FOREMAN. CAN HE GET BACK ON THE JOB? Yes, he can apply for reinstatement within sixty days to the union representative. A lawyer can help him do this.

SUPPOSE THE FOREMAN DIDN'T LIKE MY BROTHER AND SAID [redacted] DRINKING ON THE JOB? Your brother has a right to [redacted] true facts to the Railroad Retirement Board or to t[redacted]nion. He has a right to a hearing about this. It is important that he get the record straight, because the railroad does not have to hire men who have been drinking on the job or not doing the work.

SUPPOSE HE LEFT BECAUSE HE BECAME SICK OR WAS HURT AND DIDN'T TELL ANYONE? He should get an application for sickness benefits from the Board office or from his union. He should get a doctor to fill out a statement about his health and mail it right away before the seventh day after he became sick or injured. He will be sent claim forms to complete. You can help him, or he can get someone else, such as a lay advocate, to help him understand and complete the forms.

SUPPOSE HE ALSO BRINGS A LEGAL ACTION AGAINST THE PERSON WHO CAUSED HIM TO BE INJURED? DOES HE STILL GET DAMAGES? Yes; but he will have to pay back the benefits he gets for being sick or hurt from the Railroad Retirement Board.

MOTHER'S HELPERS

Women in big cities away from the Navajo Reservation advertise in the Navajo Times and in other newspapers for young women to cook, clean their houses, and care for their children. These are not very good jobs, but many women take them, because they can find no other employment.

The mother's helper must travel to the city with no insurance that she will receive room and board or that she will receive return transportation money if the job is different from what it was advertised to be.

The hours that these women are expected to work, and the pay that they receive in salary and in room and board are not comparable to the prevailing domestic wages in California cities if they are figured with one meal and transportation money to and from the job included. But, worse than that, the economic exploitation inherent in this work often makes it a bad personal experience for a young Navajo woman.

In the early days of Indian education, the Bureau of Indian Affairs thought that being a mother's helper was the ideal job for Indian women in white society. The Albuquerque Indian School placed Indian "girls" in homes in the city to do menial work as part of its education process. The fact that this did not prepare these young women to read and write or to take better jobs that they wanted when they graduated did not concern the people at the school.

The policy of the Bureau of Indian Affairs has changed, and few Indian women are placed from boarding schools into Anglo homes to perform this kind of task. But middle-class housewives are still "looking for a girl" to do the dirty work in their households. Black women, Puerto Ricans, chicanos, and Indian women are usually the ones who need the work.

This section will focus on Navajo workers. How can they be protected by the laws on minimum wages? How can they be sure, when they travel a thousand miles to a job, that the home will be a nice one, that they will be paid every week, and that someone will make social security payments for them to earn credits for old age payments or payments if they are disabled?

You have seen that there are state laws, federal laws, and Tribal laws. But laws have no meaning if mother's helpers or domestic workers are not included under them. And there should be some authority that is ready to act if a person complains to it.

In the matter of Navajo women who go to work in California, there are three possible sources of help:

1. The Tribe, which makes laws about things that happen on the Reservation.

2. The state of California, through its Industrial Commission, which administers laws to protect workers in that state.

3. The Secretary of the Interior, who, along with other federal officials, makes laws to protect workers who are engaged in interstate commerce.

NAVAJO TIMES

Letters to the Editor

'Mother's Helper'

To The Editor: As a regular reader of the Navajo Times, I have found reason to question the judgement of your classified advertising department as it continues to print advertisements for "mother's helper's."

The salary offered is usually one hundred dollars monthly, an amount that is not only far below minimum wage standards, but also entirely inadequate for a single person's needs and entertainment in any large city. What many job descriptions do not clearly indicate is that the "mother's helper" is expected to perform as a kind of full time domestic servant for seven days a week, from ten to fourteen hours a day.

Suppose that a Navajo woman discovers that the job she has accepted is a form of economic peonage? How will she return home? In all of the advertisements that offer to pay an applicant's way to California, I have never seen one that offered a dissatisfied young woman her travel fare back to her home.

It is a sad comment on American society that there are always among the more affluent, those who look to the less privileged with an idea to take advantage of their economic situation and to obtain "cheap help" for their families. On the East Coast, advertisements similar to those in the Navajo Times attract women from the Caribbean Islands. The plight of a woman who is stranded in a large city, far from her friends and family, with an unpleasant job at slave wages, is one that is often repeated for welfare agencies on both coasts.

Why then should the Navajo Times, a paper that is published for and owned by the Navajo people, be a party to this cruel fraud upon many young women of the Tribe? Why should it encourage this form of economic exploitation by acting as the chief vehicle for those who wish to exploit?

I would suggest that the proper tribal authorities review the present policy with regard to the acceptance of "mother's helper" advertisements. Perhaps advertisers could be required to pay a living wage to these girls and to post a bond with the tribal court to be used to pay the employee's return trip expenses if she finds that the job is not all that it was cut out to be as a condition to acceptance of their want-ad in the Navajo Times.

Certainly the young women of the Navajo Tribe deserve a more enlightened policy than is presently followed by the Navajo Times. Their dignity and personal well being should not be risked for six cents a word.

Stephen Conn
Dinebeiina Nahiilna Be
Agaditahe
P.O. Box 116
Crownpoint, N.M. 87313

(It's funny, in view of all of the above alleged exploitation, that we have not received one single complaint from any Navajo woman in all the years that these ads have been running.--The Editor).

The editor's point of view is interesting. A Navajo woman who has had a bad experience is supposed to come to him. Until then, he will take no responsibility for what happens to any women. Above all, he will feel free to ignore the Tribal Council resolution.

Lorene Bennett answered some of these advertisements, and asked the prospective employers certain questions. Read one of these letters that she wrote and the answers she received. Do you think that it is important for a girl who plans to go to California to take one of these jobs to know the answers to any of these questions? If so, to which ones? Why?

Post Office Box 116
Crownpoint, New Mexico 87313

Dear Madam:

I am writing in regards to your ad in the Navajo Times newspaper, requesting for a mother's helper. I am very interested in getting a babysitting job. I am twenty years old. I graduated from school and I am looking for a job away from the reservation. However, before I leave or accept I would like to ask you the following questions and would appreciate it if you would answer them and return this letter back to me as soon as possible.

1) Am I required to wear a uniform while working for you? [Only if you desire to. If so I will furnish it for you]

2) Will I eat my meals with you or alone? [No answer]

3) Am I required to do the cooking? [No cooking is necessary]

4) How many days off will I have and how many hours a day am I required to work? [1 1/2 days a week]

5) Will you take my share of Social Security out of my earnings or will you pay it yourself? [This we could discuss on phone]

6) Are there any other Indian girls or boys in tnat area? [Not to my knowledge]

7) Is there transportation available nearby? [Yes, very good transportation]

8) Have you ever been turned down by BIA Indian Schools when hiring girls to help you? [No]

9) What does your husband do for a living and how much does he make a year? [No answer]

10) If I am not satisfied with this job, will you pay my way back to the reservation? [We will make satisfactory arrangements]

I will appreciate your answering these questions and returning this letter back to me as soon as possible. Thank you.

Sincerely,

Lorraine Bennett.

Only twenty-nine out of ninety-three advertisers returned the questionnaire. Of these, only a few answered fully. The rest simply attacked the very idea that they should be required to answer questions from a prospective employee.

The question concerning return passage is enlightening. Only ten out of the twenty-nine responses said that they would definitely pay return passage. This is ten of about ninety-three people asked.

A typical refusal was this one, from a woman in Ridgecrest, California: "No--if either you or we are not satisfied with your job here, you will stay long enough to earn your fare to return home, as we are not financing trips to sunny, lovely California." This means that the woman must stay for about a month to earn her fare, no matter how terrible are the conditions that she finds.

Lorene Bennett went to Tribal Court against the Navajo Times. The case was a civil and not a criminal case. She asked the court to order the Navajo Times to stop printing these ads, because she said that the Tribal law about employer registration should apply to the Navajo Times, since it is owned by the Navajo Tribe. Miss Bennett represented herself and other young women looking for work.

The judge refused to order the newspaper to stop printing the ads. Miss Bennett had her lay advocate appeal this case to the Court of Appeals.

IN THE TRIAL COURT OF THE NAVAJO TRIBE
JUDICIAL DISTRICT OF
WINDOW ROCK, ARIZONA

LORRAINE BENNETT, and other Navajo Women, Fort Defiance, Arizona, Plaintiffs, vs. THE NAVAJO TRIBE, Window Rock, Arizona, Defendants.	ORDER OF DISMISSAL

This Court having carefully considered the plaintiffs' petition is of the opinion that this suit should be dismissed.

This Court is not sure it has jurisdiction on the defendant, THE NAVAJO TIMES (and there is particular doubt that an Order against the defendants' editor, Mr. Hardwick, a non-Indian employee of the BIA, could be enforced). But without deciding the issue of jurisdiction, this Court holds that CA-47-52, Control of Reservation Labor Recruitment, was not designed to cover advertisements for "mother's helpers". The ads now being placed in the defendants' newspaper could be placed in the Gallup newspaper (which has a wide circulation on the Navajo Reservation) and this Court clearly has no power to Order a Gallup newspaper to refuse such an ad.

The plaintiffs' suit is hereby dismissed.

The judge said that the law did not apply. The Tribal judges do not make law. They interpret it. Do you agree with the judge's decision? Does it matter that Tribal law does not apply to the Gallup Independent? Suppose a Navajo is driving a car while intoxicated on

the Reservation. The Tribal law applies to him. Does it matter that the same law does not apply to that man when he is driving in Gallup?

A Class Project

Think of ways to change the law. These might be:

1. Tell your councilman about this problem.

2. Pass a chapter resolution directed to the Chairman or to the Secretary of the Interior.

How would you help your relatives who were going to work in a distant city?

1. Write a letter asking important questions, as Miss Bennett did.

2. Help them get in touch with a lawyer in that city if they have problems.

3. Explain to them how to complain to Social Security offices in the city if no money is deducted.

What other ways can you think of?

INCOME TAX AND NAVAJO PEOPLE

Should Indians have to pay income tax? Navajo people pay federal income tax, but two groups of Navajos who live on the Reservation and in New Mexico and Arizona are suing the state officials in charge of collection of state income taxes.

They argue that because all the money they earn comes from sources on the Reservation, the states do not have the right to tax this income. The Navajo Tribe might have the right to tax it, but the states do not.

Taxation is an important part of self-government. The lawyers for the plaintiffs argue that New Mexico agreed not to tax the property of Indians residing on an Indian Reservation as a condition of its admission to statehood.

They also argue that the Indian Civil Rights Bill and the case law on rights of Indian self-government require that the Tribe must give its consent of the state is to be able to tax on Tribal land.

If the state taxes, the argument runs, the Tribe will be stopped from doing its own taxation, because people will be placed under an impossible double burden if they have to pay taxes to the Tribe and to the state both.

Do you think that taxation is important to the Navajo Tribe? Would taxation be better for the Tribe as a way of raising money than selling mineral rights on Black Mesa for a small amount of money, while letting the state of Arizona collect taxes on the mining operation there?

NOTE TO TEACHERS

Following is an assortment of materials designed to acquaint the student with three programs?

WELFARE

THE FOOD STAMP PROGRAM, OR THE SO-CALLED COMMODITY PROGRAM

SCHOOL LUNCH PROGRAM

The teacher who is unacquainted with these programs should consult a legal services attorney or lay advocate, so as to prepare himself for the questions raised by class members.

The intent of this section is to demonstrate that welfare in any of the above forms is a legal right that may be defended, and that does not correctly subject the recipient to humiliation.

1. Welfare Applications

Who can get welfare assistance? People who are old, disabled, or blind get help from the state. Women who must raise children without the help of husbands also get state help. Indian men who are out of work and live on Indian land can get general assistance from the Bureau of Indian Affairs. So can any Indian people who could be described as falling under the categories listed above (old, disabled, or raising children without husbands to help), but who do not qualify for state welfare aid.

An interview with a caseworker is the start of getting welfare help. Having a good interpreter is important. If you are refused welfare help and think that you should have been accepted, you can ask for the "fair hearing" described in our material.

The caseworker asks you questions that have to do with money you are receiving or that members of your family are receiving. The caseworker cannot ask you or your relatives personal questions (for example, "Who is your boyfriend? Does he stay at your house? Does he give you fancy presents or money?"). Caseworkers who ask you personal questions should be reported.

2. Lorene Bennett Testimony

Read the testimony of this young Navajo woman, which she gave before the Congressmen in Washington. She tells them about welfare problems. Which of these problems have you heard about where you live? Have you heard of any other ones? If so, what are they? Do you think that Miss Bennett has a good idea in talking to the people who make

the federal laws about these welfare programs?

3. Mrs. M and Surplus Foods

Mrs. M received commodities, as do many parents of children on the Navajo Reservation. What do people say about this food where you live? What can they do to get better food from the government?

4. Food Stamps

The food stamp pamphlet is intended to be read by the class after they have seen the video about food stamps in Torreon. The teacher should familiarize himself with A GUIDE TO FOOD STAMPS (prepared by M. Pappalardo, American Friends Service Committee, Inc., 160 North Fifteenth Street, Philadelphia, Pennsylvania).

5. School Lunch Programs

The account of Mrs. M's experience, and "Feed Kids--It's the Law" should be read. Study questions: Is it right that students who cannot pay for their lunch are kept apart from their friends who can? It is against the law. Each school system must have special rules about how they give students their lunches. Does your school have them? Ask.

Other Source Materials

THEIR DAILY BREAD is an excellent lay summary of government food programs. See also, HUNGER--WHY? (AFSC) for an overview of the success of the commodity and stamp programs in many parts of the country.

SURPLUS FOOD VERSUS FOOD STAMPS

We have learned that the Navajo consumer has been forced to buy food and the other basic necessities of life on credit. This credit was obtained by leaving pawn with the trader, or was based on "book credit" secured with a promise to give the trader the next wage, welfare, social security or veterans check when it came

in. The kind of overall dependence that the Navajo consumer has on this costly credit, paid for in high food costs and high interest, is often called credit saturation. It ties a person to his source of credit and eliminates his freedom of choice to do what he wants with money when he gets it.

Navajo people have always felt that a person can spend money or use things owned by him in the way that he wants. This right to "alienate" (give away) property was the most important part of ownership.

The federal government has given two kinds of help to the Navajo consumer who does not have much income, or who is dependent on welfare. One kind of help is canned or packaged food that the government buys from farmers to help them keep their prices high. The other kind of help is food coupons that can be used just like money to buy food. Since both might help the consumer escape from credit saturation, it is important to understand the good things and the bad things about each of these two programs.

The next section will include information about the so-called "surplus food" program, and about food stamps and the way that this substitute for food money in the pocket can be used to help individuals and whole Navajos communities live better.

GENERAL FARM PROGRAM
AND
FOOD STAMP PROGRAM

HEARINGS BEFORE THE COMMITTEE ON AGRICULTURE
Ninety-First Congress
First Session
October 21, 1969

STATEMENT OF MISS LORENE BENNETT, FORT DEFIANCE, ARIZONA ON BEHALF OF CRASH SURVEY AT CROWNPOINT, NEW MEXICO

MISS BENNETT. I am Lorene Bennett from Fort Defiance, Arizona, having done some work in the Crownpoint, New Mexico area, particularly with the Navajo people in three counties in New Mexico, McKinley County, Sandoval County and San Juan County. The majority of Navajo Indians who live in this area are receiving assistance from three welfare departments--the tribal welfare, the state welfare, and the Bureau of Indian Affairs welfare.

It seems to me this morning, we are talking about getting people to become self-sufficient. It seems to me that you cannot do this if you are assuming that all people are alike throughout the United States. However, I find this untrue, because in my area, the people of the Navajo Reservation [Tribe] have become too dependent on various agencies in the respect that the agencies are not working to get people to try to do anything better, for the simple reason that I think it is just paternalistic racism on the Navajo Reservation [in the Navajo country]. The people who are working for the welfare in many cases are holding down the Navajo. At the same time, they are screaming that help should not be given to the Navajo. At the same time, they are sitting on these Navajos who can and would like, in many cases, to get self-help.

The Navajos live scattered throughout New Mexico. The roads are in bad condition. In many cases, the roads are dirt roads and in many cases, when it rains or snows, it is impossible to get through.

The food stamp program has only been used in the Sandoval County where 250 Navajos use it. Otherwise, in McKinley and San Juan County, commodities are still being used. We conducted a study and we found that

food stamps are being discouraged. When we asked county welfare programs if they had given information regarding food stamps, they said they were not under the food stamp program, therefore, found it irrelevant to give information regarding food stamps. So many people asked in these areas did not know what food stamps were and were totally unaware that such a program existed.

For those people who do know, they are being discouraged daily by the welfare department. They are either told that they can try to get their own funds or that they are being too dependent and that the agencies are being too lenient in helping or even providing such programs.

The majority of the people in Sandoval County who are receiving food stamps switched willingly to food stamps from commodities for the simple reason that in most cases, people are complaining that commodities do not meet their needs. For one thing, certain commodities are not used correctly by the people. That is, the commodities that they use in the main food they eat daily and not a supplement for the Navajo people.

In some cases, it was reported that commodities are used to hold bridges together, such as powdered milk which in most cases, people do not use, and in some cases, they are used to feed animals.

The food stamp program is going to be a big problem if these different counties switch over for the simple reason that traders in certain areas control communities. They are the U.S. Post Office, they are a transportation center, they are an employment center in most cases, and they are general merchants. In one area, a trader uses his private credit to give food stamps. When food stamps are distributed, the trader is harassing the Navajo people to pay the bill, or perhaps he encourages loans for food stamps, whereby 20 to 50 percent interest rate is added on to the loan he gives for the people to buy food stamps. In some cases, the food stamps have been used to pay off credit by the trader.

When brought to the attention of the Sandoval County Welfare Department, they were, according to them, shocked to hear of such incidents, because as far as they knew, there were no problems, which proved to many of us that they were not doing their work, working directly with the people. Up until now, nothing has been done about that situation.

The Senator and the Governor from that state, New Mexico, were notified. We have not had a chance to meet with him yet. However, the Governor has discouraged anything to be done about it. As a matter of fact, a mile from the trading center is a tribally owned land where the people were willing to make the center to have their food stamps distributed. However, because of the trader's political weight as well as the Senator's political weight, we found that the HELP school was discouraged and asked to pull out the invitation. Up to date, nothing has been done about that situation.

The welfare departments are aware of these problems. They are aware of the fact that the traders manipulate welfare checks, that they manipulate food stamps for their own gain. However, they have not done anything about it. I do not think they are that concerned, just so they get the food stamps in the hands of the people. What they do with them is none of their concern from what I gather.

The attitude of the people who work for these welfare agencies are not at all helping. It seems to me like they are constantly worried about the taxpayers' money and, therefore, discourage any kind of assistance for the Navajo. The Navajo takes this for granted. He does not protest because for years, we have been treated in this manner.

Just recently, the welfare rights organizations have been set up in four agencies and people are beginning to get together to ask what are our rights? We are beginning to question some of the programs such as the food stamps. As I say, there are people who do not know about the food stamps and they are shocked to hear of such an existing program.

In many cases, the Navajo, as I say, is discouraged. There is one incident of a Navajo walking to a welfare office and inquiring about assistance. When the person there saw the Navajo, that she had a beautiful Navajo necklace, why don't you pawn that, he told her. So here is someone asking the Navajo to give up what's the symbol, what's the last dignity or the last pride of a person., These are some of the incidents that happen daily.

Another thing is that there is lack of communication on the part of what programs are available, commodity programs as well as food stamps programs. For one thing, the majority of the welfare workers are Anglos and do not speak Navajo or do not know how to go about relating to the Navajo, therefore, the Navajo is shy to come and speak to the worker.

In many communities, the agencies and different welfare workers, we brought out the fact that there should be more Navajos hired as caseworkers, doing away with the 4-year college requirements or whatever they have, because the majority of the people who do get along, do know some of the problems that exist, do not have 4 years of college. Those that do are drawn away from working with the welfare departments to something else that might provide better pay.

So you see, there is a lack of communication on the reservations. The majority of the people who are working with the welfare departments do have an obnoxious attitude as in one case, a caseworker was very obnoxious when we went up to a trading post to hand out welfare rights leaflets. He commented that we did not like Anglo superiority. So these are some of the caseworkers that do work with the Navajo.

The Navajos usually do not have ready case, so they would run into a problem with food stamps. As I say, they would have to get loans from the trading posts. In many cases, they will go under the harassment of the trader. Food stamps are known, at least in Sandoval County, where Navajos are receiving food stamps, to provide better foods. The Navajo does have the choice to go to a trading post or to the nearest town to buy vegetables and meats, which they rarely have.

I think when you talk about getting the people, as I think someone mentioned this morning, that someone should contribute, communities should contribute to get something, I think you are dealing with a completely different situation, because I think here you would have to first do away with these kind of attitudes the majority of the workers have there and do away with the attitude the traders have of manipulating the situation to their own political gain.

It would seem to me that some investigation should take place in regard to food stamps for the Navajo as well and in regard to the attitude of the welfare workers with regard to food stamps given to the people. Since the people do not have ready cash on hand, it would be necessary that the food stamps programs should be flexible so that people, whenever they have money, can buy food stamps. It is not always at a certain time that they have money and that certain time being the time when food stamps are distributed.

Also, the majority of people are not working, as I say. They do lack money. As I pointed out earlier, a lot of time, they are on credit and they are in need of money constantly. Because of this, they do not have any money and would have to go to the trader, which binds him to this credit situation. Therefore, I would recommend that the stamps be lower or that some of the people who do not have any income whatsoever get free stamps. I think in many cases, many of these people do have children to provide clothing for and in many cases, they will not have this money to buy food stamps. They would prefer to buy more clothing for their children who go to school during the winter months.

In many cases, many of these people are not eating a balanced diet and many of these children are not eating a balanced diet, except for the time they are in school.

In the commodity program, I would like to point out the fact that in many cases, many of the Navajos do not get what they need, as for instance, in New Mexico, Navajos receive lima beans, which in many cases, they do not eat, for the simple reason that the pinto beans that are usually given out are given out to the Spanish-Americans in the different counties because they do use pinto beans in a lot of their diet. The Navajos get the leftovers, which is lima beans. In many cases, they do not eat lima beans and do not know how to fix them in many cases, because there is lack of food demonstration in different areas. For instance, in one area, a woman told me that she did not know how to use many of the foods and they cut up that meat and ate it just that way. In many cases, many of them do not read; therefore, can't read directions on the label, and there is no one to go around to show them how to use these foods creatively.

The commodities, when given out, are taken home by these people. Usually, they weigh a lot and in many cases, many of these people hitchhike. They do not have transportation and they live, say, from 20 miles up to 50 miles from the distribution center, so they put them in bags and boxes and stand by the roadside and are lucky if they get a ride. Otherwise, they would have to borrow money from the trader again to buy gas for someone who might have a vehicle. Therefore, he is bound to the trader in that respect, for a high interest rate from the trader.

When asked that the welfare department look into such a situation as providing transportation for people who do not have transportation, the answer from a San Juan County employee was that the Navajos were becoming to dependent. However, he failed to even get the Navajos to provide a situation where the Navajos can gain confidence and independence.

People have to wait long periods of time for certification, which involves unnecessary red tape in most cases and in most cases, because of their long wait, which I think is intentional, many people are discouraged and never bother going back and are hardly having a balanced meal. In fact, many of the people who do receive commodities do not have a balanced meal, so you would understand that many of the people who do not receive commodities would have.

After a long wait for certification, if a family does not pick up his commodity 3 consecutive months, he is automatically cut off. In most cases, like during the summer months, families, because they are so desperate in their need of money and because they want to work, go off to migratory labor, off the reservation or outside the state and there they make very little. Because they are working and trying to make what money they can, they are automatically cut off. Upon return, they have to wait for, say a period of 3 months to a year for recertification.

Evaluations sometimes on certifications are based upon the assumed income. As for instance, a grazing permit. Perhaps a family has a grazing permit. They are allowed so many sheep on certain lands. Because of this permit, many of the welfare workers say that they have an assumed income of, say, 20 heads of sheep times $20 and assume that income per year. If this person, if they think this

person can make enough money off that sheep, they do not certify him because he is getting some kind of income. But actually, the Navajos do not sell their sheep that much. In fact, maybe one sheep is saved for food per year.

Or else, as I said earlier, a Navajo was asked to give up her jewelry for pawn so she could eat. In other cases, because a certain family went off on migratory labor and bought a vehicle to come back in, the welfare department will refuse to give them assistance because they have a vehicle that is valued at so much.

These are some of the things they use for evaluating. Because the Navajos go through this and take it for granted that this is the way it is supposed to be, they do not protest. The various welfare departments who have been made aware of this, however, have failed to act upon it. These are some of the incidents I found this summer...I would go into more detail on it. However, I have a report here if anybody would like or is interested in getting a copy of one. I would be more than happy to give you a copy.

I would like to comment on another thing. I was also involved in another study conducted by the Southwestern Indian Development in Arizona, who went out to the Navajo Reservation and did a study on the trading post system. A lot of what I brought out is brought out in that report and if you would like a copy, copies will be made available to you.

Interview by Lorene Bennett with Mrs. M, Coal Mine, New Mexico
Wife of commodities recipient

August 20, 1969

Mrs. M lives in a one-room house about five miles from the community of Coal Mine. She is living there with her mother-in-law and seven children. Mr. M has gone to California for migratory work, picking peaches. She informed me that the recipients gathered at the store about six or seven miles from where the family lives. The monthly distribution started about 10:00 to 12:00 noon. "We just started about three months ago for three months only. My husband, he is not here now, was told that he will receive three distributions only. The last time we received commodities prior to the three we have received was about six years ago. My husband was unable to work at that time. He was constantly in the hospital because of his high blood pressure. He had nose bleeds constantly. Now he can work and is in California. We cannot receive commodities because he is not here. He is the only person who can receive food because he is the household head. They (McKinley County Welfare) had him fill out some papers. It never used to be this way. Six years ago we filled out papers too, but it was not this difficult. We had help them. The workers helped us. The workers told us that the person who fills out the papers (application) has to be the man of the family. My mother-in-law used to get commodities, but they told us that she was on my husband's household list so they cancelled her commodities.

If the person (female) is not married, they have the eldest son receive the commodities. I am thinking of taking my eldest son who is fourteen to receive commodities for us. I want to go there and find out, which would cost us about $2.00 to $3.00 for going over and back. I want to see someone about it but I don't know when to see them. They tell us when they will be returning. They mark the card for us. But usually on these days they are rushing and usually they have someone that goes around on the twelfth of each month filling out applications for financial assistance, but not for commodities. I will probably have to wait because my husband is away. Long ago it was far better. Even if the person who receives commodities was not here, a relative could pick it up for the family. Now the person whose name is on the card has to be the one to receive the commodities.

Commodity Identification Card
New Mexico Department of Public Welfare
County 17 2/1/69
Case No.

Name _____
Address _____

/s/
Signature of Client

Signature of Authorized Representative 5/12/67

/s/
Caseworker

SIDE 1

Expiration Date 8-30-69

You must apply for recertification at the county DPW office if you wish to receive commodities after this date.

Date of Next Distribution

6-2-69 September 2, 1969
July 1, 1969
August 1, 1969

SIDE 2

Below are listed some of the items she has received before:

3 boxes of dried milk
4 boxes of cheese
9 bags of rice
9 boxes of prunes

9 cans of meat (beef)
9 cans of meat (pork)
5 ten lbs. flour
3 five lbs. boxes of oatmeal
3 five lbs. boxes of yellow cornmeal
9 cubes of butter (cans)
9 cans of green beans
9 large cans of tomato juice
5 cans of powdered eggs.

Mrs. M thought that for each person there was one of each item. She went on to say that the welfare office tried to discourage older people from receiving commodities, because she knew of several people in that particular area who felt the same way. She said they (welfare) refused to give Mr. P anything because he received State Financial Assistance. They told him that only his children can receive commodities. "It seems to me that they make efforts to get us to suffer before they can begin to meet our needs. When we ask for certain things, they make such a big fuss about them. Not always do the same people come to distribute foods. They vary, sometimes they are Mexicans, sometimes all mixed, other times are Navajos. They tell us, 'We give you food, what more do you want. Stop being choosy.'"

When asked what they did when they ran out of food before the next distribution date, Mrs. M informed me that her mother-in-law who was receiving state financial assistance would buy the needed foods at the trading post.

When asked if other people might want commodities or what they did about getting them, she answered, "I don't think that they might want it that badly. They never tried to get them. I don't know."

"We don't like that director. We heard that she told these people who have transportation that they could not receive commodities. Also, some of us are holding grazing permits although we don't have sheep, and she would hold this against us and refuse us commodities. She would say, 'I don't see why you want assistance--you have a car--don't come here.' Like for my husband, she said that he had to get a job so he was only able to get help for three months. Even if he were to sign unemployment and receive payments, she would hold this against us."

Mrs. M was thankful that someone was concerned enough to go out to ask the people about their needs. She begged that something be done about this. She said they have suffered long enough.

She said, "I think they give people just three months, or maybe it is because my husband looked like he was able to work. They told him that he better look for a job, though, so they gave him three months."

She continued, "It seems to me that the winter months are the hardest. It's hard to catch rides, to find somebody to care for the children, so what we do is that we store most of the foods we receive in the summer months so we don't run out easily. In the summer, we have small patches of corn and squash fields. So that helps us plenty. In the winter, we have these foods stored." When asked whether they like the foods received, Mrs. M replied, "Yes, of course. It's food." She said that at times she would like to have more but never asked.

Mrs. M informed me that she knows of no one who demonstrates the various uses of commodities, only she said that several times they talked about them in chapter houses, but as far as she knows, nothing ever happened. She did tell me that her children, the oldest daughters, usually read recipes off the cans and usually fixed them in certain ways.

Mrs. M never heard of food stamps. She did say, however, that it was mentioned at a welfare rights organization meeting once, but she does not know enough about them. The welfare people never once mentioned them to her. Mrs. M was interested in finding out more about them. I briefly informed her about the food stamps and mentioned that perhaps she might find out detailed information at the next welfare rights meeting.

EXTRA FOOD MONEY FOR YOU

Food Stamps for Indian People

Food stamps are:

> Special papers to buy the food you like, when you want it, in the amount that you want. Food stamps are like money for food in your pocket.

For many years, the Navajo people in McKinley, Valencia, and San Juan counties have been denied the benefits of the food stamp program. Instead, they have received surplus foods like powdered milk and peanut butter.

Indian people have told New Mexico:

> We do not eat a lot of this kind of food--even our animals will not eat it.
>
> Old people cannot go and get all of this food unless they pay someone to carry them.
>
> We still have to buy our fresh vegetables, fruit and meat, and other things at high prices at the market or trading post.

NOW, the food stamp program will solve these problems. Navajo people can go to any store they want and buy any food they like with these stamps.

Some Questions about Food Stamps

CAN I USE FOOD STAMPS TO BUY A LITTLE MEAT AND FRUIT AT A TIME?

> Yes, you can buy things when you want them.

CAN I USE FOOD STAMPS TO SHOP WHERE THEY HAVE SPECIALS AND GIVE GREEN STAMPS?

> Yes, all of the places that sell food, the supermarkets in Gallup and Farmington and the trading posts, usually become eligible to take food stamps just like money.

CAN I PAY MY OLD BILLS WITH FOOD STAMPS?

No, food stamps are for new purchases of food. But you do not have to have any more grocery bills at the trading post if you use food stamps.

PEOPLE SAY THAT YOU MUST PAY FOR FOOD STAMPS. IS THIS TRUE?

The government asks that people with some income pay a little for food stamps. But most of the food stamps are free. This means that $5 can buy $50 of food at any store in the county for some people who qualify for food stamps.

For example:

An old woman receives $10 a month in weaving. She lives alone. This woman can pay 50 cents and receive $28 worth of food stamps. This means that her 50 cents will get her $27.50 in free food for the month. She can pay this 50 cents at one time, or pay 25 cents two times a month, if she wants.

A man and wife and three children live together and get a $10 check from Social Security. They will pay $26 for $126 in food stamps. This means that the family will receive coupons for $100 in food absolutely free. They can pay $13 each two weeks if that will help.

MY CASEWORKER FROM WELFARE SAYS THAT FOOD STAMPS ARE BAD FOR INDIANS. WHY DOES SHE SAY THIS?

The welfare department of New Mexico and the caseworkers have avoided food stamps for as long as possible because they know that the state will have to pay for the distribution of food stamps. The federal government paid all of the costs of surplus food delivery. Also, many welfare workers are lazy. In short, they do not want to spend money to help Navajos, and they are lazy.

MY LOCAL TRADER SAYS THAT FOOD STAMPS ARE BAD FOR INDIANS. WHY IS THIS?

Your local trader may have heard that the Torreon Navajos used the "food money" from food stamps and organized their own food store. Now Torreon people sell food to their own people in exchange for food stamps. For the first time, local people can buy at two places: the local trader or their own store. Profits from their own store go to the people themselves. So they save on food prices and keep all their profits. Your chapter can also organize a store like this.

Some traders are also afraid that people will not have big bills with them if they have food stamps. This is true. Food stamps mean that Navajos will not have big bills on groceries. They will not have to pawn as much. They will be able to save money with food stamps, and not have to borrow money and pay high interest for it.

SUPPOSE I DO NOT HAVE MONEY FOR FOOD STAMPS?

The OEO has an emergency food program. They can use this to give poor families the money they need to pay for food stamps.

FOOD STAMPS MEAN EXTRA "MONEY" IN YOUR POCKET. TO TAKE WHERE YOU WANT, TO BUY THINGS WHEN YOU WANT. TO EAT WHATEVER YOU WANT.

ADMINISTRATIVE RULES ARE LAWS

Arizona's state legislature, and New Mexico's, are made up of elected state senators and representatives. The laws that they pass are enforced by different departments in the executive branch of the state government. These departments sometimes have the ability to make their own laws. These laws that they make are called administrative regulations.

Sometimes the state uses money from the federal government, collected in national taxes, as well as the money collected in state taxes. In this case, the administrative rules that are like laws come from Washington and from the state, and are enforced by the states.

State welfare regulations for money to help old or disabled persons and women with children to bring up without the assistance of husbands are examples of administrative rules that act like laws. The "surplus" commodities and food stamps are also subject to federal and state rules.

An example of administrative rules working just like laws is this: You go into Gallup to shop, and you decide to get something to eat. Restaurant A is where all the Crownpoint people meet. You go in and start to sit down. You see an official-looking seal in red. This means that the State Environmental Improvement Agency says that this restaurant is operating with unsanitary conditions. Do you want to eat in a place like this? Who put this sign there? It was the health inspectors of the State of New Mexico. They decide if a restaurant is entitled to a green (top sanitary conditions), yellow (one violation), or red (unsanitary conditions) sign. What are the rules they decide by? They are the administrative regulations passed by the department.

Suppose you went to a restaurant with a green sticker, but you found a cigarette butt in your plate? could complain to the Health Department; and, after reviewing the facts, they might change their rating of the restaurant. Does this mean that the restaurant got worse in its health practices since the inspector was last there? Perhaps. Could it mean that the inspector did his job improperly or that he did not apply the rules about sanitation correctly? Yes.

The most important thing to remember when administrative rules apply to you is that the people who apply them--the state or BIA caseworker, the food stamp lady, the social security man--do not know or understand all the rules. They are like the police in this way. Sometimes there is no clear understanding in the whole county office or the welfare department. Sometimes the courts have to be asked to set the record straight, and to explain how the rule should be interpreted when it is read alongside other important laws.

It may be that a rule is unfair to certain people. The court may say that Congress did not intend the welfare department to make rules that are unfair to groups like Indian people. The court may say that the rules cannot be made because the United States Constitution, the supreme law of the land, prohibits them.

Another thing the court may say is that a practice of the welfare department violates individual rights. They might say that the caseworker asks too many personal questions that have nothing to do with income.

A Fair Hearing

In nearly every case of a state or federal agency providing a service, the department gives a person who complains about the way a rule is applied to him or about the way he is treated the right to a fair hearing.

A fair hearing is a right. The department takes a look at itself and its practices.

If the welfare department has decided that it will not give John Yazzie any more food stamps, he can tell the welfare people he wants a fair hearing. The department is given a chance to look at itself during a hearing to see if it thinks its practices are correct.

Remember that a judge and a policeman both represent the law, but this does not stop the judge from looking to see if the way the policeman acts is right, and from studying the evidence on both sides to see if the Navajo Tribe (or the state) has enough to prove a defendant guilty of a crime.

The welfare department has different parts, too. The hearing examiner is like a judge. He did not make the decision about denying the check. He reviews the reasoning of the caseworker. He may decide that the rules were interpreted correctly. He may decide that the caseworker did not apply the rules correctly. If he does, the person who complains will get his check or his food stamps. If he missed any because of the decision, he will get all the back checks he missed, as a way of showing that the welfare department was wrong.

But how can you demand a welfare check? Isn't it like charity? No. Welfare checks are for those who qualify, and they are just as much a right as service at PHS is for Indian people. The government has decided that certain people should get this money, just as it has decided that people who earn salaries should pay income taxes.

At a fair hearing you can be represented by a lawyer or by a Navajo lay advocate or by someone else you choose. You can listen to the caseworker's side and have your representative ask questions. You can tell your side and have witnesses brought to tell your side. Finally, if the decision is against you, your lawyer can take the case to court for a judge to review the record.

The judge will look to see if the hearing was conducted fairly and if the decision was reached on the evidence and not directed by outside considerations, gossip, or prejudice. He will also see if the welfare department is applying the correct rule, or if the rule is correctly understood by them the way the lawmakers or the Constitution meant it to be.

If you're not a lawyer, how can you know about the rules? You do not have to know or understand the rules. All you have to do is ask for a fair hearing. This is your right. Remember that the caseworker is not a lawyer. Some caseworkers do not have complete training. Leave it to your Navajo lay advocate or attorney to handle the technicalities.

But you hold the key--you must ask for a fair hearing. You can do this with a letter written for you to the caseworker, or you can do it verbally. By doing this, you give them notice of your right to a fair hearing.

THE FAIR HEARING

Recall the video tape you have seen about food stamps in Torreon. Suppose the caseworker had decided that because Mrs. Trujillo's husband was not there, she could not receive food stamps. This would have been a violation of the welfare regulations, although Mrs. Trujillo did not know this. Mrs. Trujillo could sign on behalf of her husband, the head of the household.

Suppose the caseworker had decided that Mrs. Trujillo was not eligible because the welfare department had automatically assumed that there was $12 in income coming from each sheep, and had added that amount onto her income at $1 per head per month.

This manner of adding up a family's income is also incorrect. Mrs. Trujillo understood that when she told the caseworker that they had not sold any of their sheep. But the caseworker did not understand her own rules, and so she nearly did not certify Mrs. Trujillo for food stamps.

Finally, you saw that the caseworker added the income incorrectly the first time.

Any of the mistakes above could have resulted in a decertifying for food stamps.

Under the new rules, the state must give Mrs. Trujillo fifteen days notice if the dispute is about facts and explain why they are cutting her family off. They must tell her about fair hearings.

If she, or her husband tells the caseworker or the county welfare department or the main office in Santa Fe that she wants a fair hearing, her family will continue to receive food stamps until the hearing has been held and a decision has been reached.

This continuance is a legal right for people if they ask for it within fifteen days and the dispute is about income. If they wait longer than that, the hearing will be held, but it will be up to the state whether or not food stamps are given until the hearing date.

The family that is threatened with loss or reduction of their state or BIA welfare check can also keep getting their regular check until a hearing has been held and a decision reached for them or against them. In this case, they have thirty days to ask for a hearing.

Three problems affect Navajo people: First, they may not get the notice in the mail until many weeks have passed. People go off to do migrant work. Postal delivery at the trading post is less formal than at the post office. The trader may not tell them that they have a letter. If they get the letter late, they can still have a lay advocate or attorney explain why they are asking for a fair hearing later than the time the rules say they should. They should not give up--they still have legal rights that they can use.

Second, the caseworker may not explain the right to a fair hearing in a way that people can understand. Sometimes the caseworker does not even read that part of the application to the person getting welfare. Also, caseworkers sometimes try to get people to sign statements saying that they do not want a fair hearing, even after they have requested one.

These are all illegal acts. They should be reported to Santa Fe at once by your Navajo advocate. Young people must know enough about the fair hearing to understand that the caseworker must leave the welfare recipient alone after the recipient has put in a request for a fair hearing or has asked an attorney or lay advocate to do so.

A third thing is that people do not always know how to write out a notice asking for a hearing. It can be as simple as this:

Date

I want a fair hearing on my welfare (or food stamps).

Signed: Mary Yazzie

Any high school student can help his parents by writing this short note. Also, he can translate and tell this to the caseworker. Finally, he can advise his parents to see a lawyer or lay advocate, who will write the necessary letter and begin to prepare the case.

The Hearing

The time, date, and place of the hearing must be convenient to Navajo people. They must be notified in advance. This means that the hearing will be in the local chapter house, if you want, and not in the office of the welfare department in Gallup, Farmington, or St. Johns. You or your family will be told about legal help that you can get.

At a reasonable time before the hearing, you and your family can examine all documents that are important to the hearing. For example, you can review the rules (like the "sheep rule") that the caseworker applied. If there is a medical dispute, such as one over whether or not your father is able-bodied and can work, an examination will be made by someone who is independent of the caseworker and satisfactory to you and your family. If this is important, it will be made a part of the record.

The Record

The record is an official transcript of everything said, as well as of all the evidence brought by your family or by the welfare department. The evidence is called "exhibits" and is numbered as it is presented. Your legal representative will probably file a paper that shows what his arguments are about how the rule should be interpreted, and how your income should be figured out. Or, if he thinks that a rule like the "sheep rule" is unfair, illegal, or even unconstitutional, he will explain this in his papers. These papers are called a "brief."

The brief is not simply the personal opinion of the legal representative or your family. A brief will show how the legal opinion of judges in matters like this also support your side of the case.

The lawyer or legal representative of the welfare department will try to show that other legal opinions of judges support the view of the caseworker.

In arguments like this, there are almost always opinions that support both sides of the question. The lawyers will look for support in the law library. There they will find opinions from the state courts (New Mexico, Arizona, and the forty-eight other states have their own courts), where opinions are published. The Tribal Courts

do not publish opinions or keep transcripts, except for the Navajo Court of Appeals, which occasionally publishes opinions so that the Tribal Courts in Shiprock, Crownpoint, and other places will follow this legal advice in their opinions. The lawyers will also look to see what federal judges in the district courts, courts of appeals, and United States Supreme Court have said about disputes like yours.

Finally, in matters that concern welfare or food stamps, the lawyers will see what the rules of the Food and Nutrition Service, the Department of Agriculture, and the Social Security Department of the Health, Education, and Welfare Department say that may show that the state is going against a rule of the federal government in the rule that it has, or in the way that it applies it.

Does a lawyer or Navajo lay advocate know all of the law and all of the opinions of judges? No. The lawyer goes to law school for three years after college and has learned how to look for the law in law libraries. The law is very complicated and is always changing. The judges see the law in different ways, although they try to follow what has been said before by the higher courts. These opinions of judges are called precedents.

This does not stop the law from changing, however. Many other factors can point it in a new way. A judge or judges in high courts with different philosophies may be more receptive to a legal argument--even when it has been made many, many times, in cases they have heard again and again.

A recent example of this was a decision by the highest court in California that the death penalty was illegal and "cruel and unusual punishment" of the kind that was prohibited by that state's constitution. Every state court in the country has heard arguments against the death penalty. So far, only California has decided to go against previous judicial ideas and precedents and decide this way.

An argument made very often is that drunkenness is a disease, not a crime. Lawyers argue that a man with a drinking problem should not be arrested again and again, and jailed or fined. Instead, he should be treated as a sick person. This argument has not been

accepted yet by the highest courts, but one day it may be, so that being drunk will no longer be treated as a crime.

Politics and history are also important. The law lives within the flow of history. Just as Navajo people would no longer say that it is good to cut off the ear, nose, or cheeks of a woman who has slept with a man not her husband because it does not seem to be modern or to work in the modern world, ideas of the judges and courts off the Reservation change. Years ago, the Supreme Court of the United States said, for example, that black and white children should attend separate schools, and that this was right according to the United States Constitution. They said that the Fourteenth Amendment to the Constitution, which says that all people are considered equal, allowed for separate but equal schools. But eighty years later, in another case, the Supreme Court decided that separate schools did not give equal educational opportunities to black and to white children. They looked beyond the opinions of the older judges and the old law to the facts, and realized that separation in schools (and on school buses, and in bathrooms, and restaurants, and even in picking which water fountain blacks or whites or Indians could drink from), a separation that was enforced even in courthouses, was unconstitutional and a violation of the Fourteenth Amendment.

Old laws and old customs are always re-examined. The ones that work well in the modern day are kept. The ones that harm people according to the modern view are changed or reinterpreted. <u>But, old customs that work should always be kept as law</u>.

The last reason for change in law is perhaps the most important for you and your family. Your complaint about the way a law or a welfare regulation is a new case, one that may be different from all that have come before, not only because you were not part of these earlier cases, but because the laws that surround the rule you are complaining about may also have changed.

The person who complains, and not the lawyer, is the key person. No lawyer can take his case to hearings or to court unless he represents people or classes of people who are being hurt by the interpretation of a rule or law. The courts in the United States, and the Tribal Courts, always look to see if there is really a dispute. They do not usually decide things or make opinions about things

that are not being fought over. If you give up, and if everyone else with your problem gives up, then the law will very likely remain the same as it has always been, even if it is unfair.

The law is made to be changed by people with problems, with the help of attorneys and lay advocates.

What You Do at the Fair Hearing

At the fair hearing, you bring witnesses to help you tell your side, and you tell your side yourself. Your witnesses, your family members, and the caseworker tell their story. They are questioned by your own legal representative of the other side. This questioning by the other side is called cross-examination.

The caseworker will sometimes read things from the case record, the information that the department keeps about the case. If the caseworker does this, your representative will demand to see the complete records, so that he and your family can look at them to make sure that what is said is not false or distorted because of other facts that were not read.

The caseworker or the lawyer for the welfare department may try to bring out things that have nothing to do with the dispute of the person who complains. The representative of your family will object to all of this. No attempts to gossip or punish the person who complains will be allowed by the lay advocate.

The hearing examiner will make a decision on all of the disputed matters in the name of the welfare agency. He will rely only on evidence, pointing out which evidence supports his decision, and giving his reasoning.

If the lawyer and your family disagree with his decision, they can take the matter to court.

Refunds

Suppose the welfare department charged you too much for food stamps? Then they must refund that extra amount to your family. If they denied you a welfare check when you were entitled to one, they must give you all of the welfare money it is your right to have.

BUREAU OF INDIAN AFFAIRS WELFARE

Are you a Navajo who can't get a job? Do you qualify for food stamps or surplus foods? Do you have a low-paying job and a big family?

If so, you probably are eligible for money from the Bureau of Indian Affairs welfare offices in Crownpoint, Fort Defiance, Shiprock, Chinle, or Tuba City.

There have been important changes. Even if you were turned down before, you can go again for a single interview and learn right away if you qualify for extra money from the Bureau of Indian Affairs.

All the children who are attending a local boarding school are included in determining the amount of the grant to a family. For each child, $8.00 is deducted from the total amount. This amount is restored during the summer, when the children are at home.

You do not need to travel to Gallup with an employment form to qualify.

Look at the chart below. Find the number of people in your family. Find the income right across from that number. If your money from your job, social security, or any other place is LESS EACH MONTH than this amount, you are probably eligible for a check from the Bureau of Indian Affairs welfare.

BIA WELFARE CHART
(for food only)

For one adult	
Living alone	$ 60.00
Living with others	55.00
For two adult persons	99.00
For one adult with one child (under 21)	79.00
For three persons	105.00
For four persons	137.00
For five persons	169.00
For six persons	200.00
For seven persons	232.00
For eight persons	263.00
For each additional person over eight, add	32.00

A maximum amount of $27.00 can also be included for utilities, provided the family owns its own home.

BIA WELFARE CHART

Rent -- The maximum allowed in each case

1 to 3 rooms for 2 to 3 persons	$37.00
4 to 6 rooms for 4 to 7 persons	47.00
6 or more rooms for 8 or more persons	57.00

Here are some examples of how people were helped:

Mr. Joe B of Crownpoint has a wife and four children. He cannot find a job in the area and does not want to leave his family alone in the winter when they need wood for the hogan. His children are in the Fort Wingate Boarding School. Mr. B is eligible for a welfare check of $200.00 a month until he can find work that pays that much. He finds a job as a bus driver in the Crownpoint area and is paid $102.00 per month. This is the only job he can find in the area. He has a wife and four children. Mr. B is entitled to a supplemental check of $98.00 every month from the Bureau of Indian Affairs.

Mr. John Y gets an unemployment check for $60.00 and a veterans check for $60.00 every month. He has a wife and three children at home. He has a right to receive a supplemental grant of $47.00 every month from the Bureau of Indian Affairs welfare office.

Mr. B and Mr. Y also will receive up to $27.00 extra for fuel for heating and cooking and electricity, and up to $57.00 for rent if it is needed.

How To Get Welfare Checks

You can go by yourself to the welfare office in your agency or to Gallup.

A better way is to go to your nearest DNA office. A tribal court advocate will accompany you if you want, and see to it that you get all the welfare money to which you are entitled.

IF YOU ARE ELIGIBLE, IT IS YOUR LEGAL RIGHT TO RECEIVE BIA WELFARE MONEY. IF YOU WERE TURNED AWAY IN THE PAST, YOU SHOULD APPLY AGAIN WITH THE HELP OF DNA.

Feed Kids--It's The Law

The New School Lunch Act (P.L. 91-248), signed into law on May 14, 1970, is now in full effect. It makes major reforms in the National School Lunch Program and establishes the right to free or reduced price meals for every child whose family's income is below the poverty level or whose family cannot afford to pay. This law must be obeyed by every school district that receives commodities or money from the Department of Agriculture for its lunch program.

FOLLOWING IS A BRIEF SUMMARY OF THE NEW SCHOOL LUNCH REGULATIONS:

1) School Districts must, as a minimum standard for eligibility, use the national guidelines for free and reduced price lunches set by the Department of Agriculture.

2) School Districts and all schools must publicize their income eligibility standards by:

a) sending a letter or notice home from school with every child describing the school's lunch program. This should have been done in September--if not, then now. This letter must include the eligibility standards for free and reduced price lunches, an application form, and the federal fair hearing procedure for appealing an unfavorable decision or requesting free lunches because of unusual circumstances.

b) copies of the School District School Lunch Policy and application forms must be made available by the Superintendent and the Principal to all interested persons and news media.

3) Eligibility is certified simply on the basis of a declaration of income on the application form. In order to deny free lunch to families who declare themselves eligible, the School District must prove through the Department of Agriculture's challenge procedure that a child is not eligible for a free or reduced price lunch. If, on the face of the application, the child is eligible

then the child receives his free or reduced price lunch until the School District proves otherwise through this "fair hearing" procedure. The "burden of proof" is on the school district when a child's eligibility is challenged.

4) The application form must be clear and simple. It should only ask questions about family size and income. Anything that is not directly related to the eligibility standards used by the school is illegal.

5) The new law makes more money available to schools from the Department of Agriculture for free and reduced price lunches. Schools should get at least 42 cents (35 cents plus 7 cents worth of commodities) for every free or reduced price meal served and can get up to 60 cents per meal.

6) Schools still receive from the Department of Agriculture 75 percent of the cost of equipment needed to start new lunch programs in schools that don't have them. This year there is more of this "equipment money" than ever before.

7) A reduced price lunch cannot cost more than 20 cents. Schools must provide the same benefits to all children in a family. If one child in a family pays 20 cents, all children in the family must pay 20 cents. If one child in a family gets a free lunch, all children in the family must get free lunches.

8) The new law and regulations re-emphasize the laws against discrimination and children working for their lunch. Both practices are strictly illegal. Children receiving free or reduced price lunches cannot be made to:

(a) work for their meals; (b) use a separate lunchroom, serving line or entrance; (c) eat at different meal or eat the meal at a different time; (d) use tickets, tokens or any other means of paying which identify them as needy children.

SCHOOL LUNCH PROGRAMS: AN EXPERIENCE

From an Interview by Lorene Bennett with
Mrs. M, Coal Mine, New Mexico

Mrs. M has six children going to school. The eldest daughter is married and does not count when it comes to commodities. Three children are attending Gallup-McKinley County Schools. Three are attending the elementary schools at the Black Hat area. As far as she knew, her children did not pay for food. Otherwise, she did not know where they were getting funds to pay for their foods. The daughter, about sixteen, said that they were on Johnson-O'Malley funds. She informed me that they had two lines in the cafeteria--one for the Johnson-O'Malley children, and one for the ones who paid for their lunches. She said that she thought that they both receive the same foods and about the same amount of food. She said that they ate at separate tables.

THE NATIONAL SCHOOL LUNCH PROGRAM: ANOTHER FAIR HEARING

Another example of a fair hearing is the procedure used when a family believes that its school children are entitled to free or reduced-price lunches granted to people with low incomes by the National School Lunch Program.

Parents in McKinley County receive a letter and a chart for applying for these lunches. If they are turned down by the local school principal, they can ask for a hearing.

For example, the Bone family applied. But the school principal said that their sheep should count as income. This is not allowed by the rules that are published in the Federal Register by lawyers for the United States Department of Agriculture Food and Nutrition Service.

The rules say that the school system should have a "simple, publicly announced method for a family to make an oral or written request for a hearing" (§245.7[1]).

Do you think that contacting the school superintendent is a simple method? How easy is that for a Navajo family in Crownpoint which doesn't have a telephone and doesn't even know where the office of the school superintendent is, or who he is? What other ways do you think would be better?

The hearing for school lunches is very much like the hearing for welfare, social security, grazing permits, or other matters that are handled by a specific bureaucracy before they can be taken to court.

Read the list of things that happen in a hearing for school lunches:

"Such hearing procedure shall provide:

(1) A simple, publicly announced method for a family to make an oral or written request for hearing;

(2) An opportunity for the family to be assisted or represented by an attorney or other person in presenting its appeal;

(3) An opportunity to examine, prior to and during the hearing, the documents and records presented to support the decision under appeal;

(4) That the hearing shall be held with reasonable promptness and convenience to the family and that adequate notice shall be given to the family as to the time and place of the hearing;

(5) An opportunity for the family to present oral or documentary evidence and arguments supporting its position without undue interference;

(6) An opportunity for the family to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses;

(7) That the hearing shall be conducted and the decision made by a hearing official who did not participate in making the decision under appeal;

(8) That the decision of the hearing official shall be based on the oral and documentary evidence presented at the hearing and made a part of the hearing record;

(9) That the family and any designated representative shall be notified in writing of the decision of the hearing official;

(10) That a written record shall be prepared with respect to each hearing, which shall include the decision under appeal, any documentary evidence and a summary of any oral testimony presented at the hearing, the decision of the hearing official, including the reasons therefore and a copy of the notification to the family of the decision of the hearing official; and

(11) That such written record of each hearing shall be preserved for a period of 3 years and shall be available for examination by the family or its representative at any reasonable time and place during such period."

If the school decides that certain persons should no longer be receiving school lunches for free or at a reduced price, they must ask for a hearing to allow the family to prove that they are also entitled. The children continue to get the lunches on the same basis until the hearing goes against them.

Why are fair hearings held before court hearings, when there is a problem about school lunches, welfare, or Social Security? The legislators who set these hearings up believe that the hearing examiner who sits as a judge in these hearings has special knowledge that the judge may not have. This knowledge comes from knowing the special rules about such matters as disability or welfare.

Another reason is that court hearings take a long time to schedule and usually require lawyers on both sides to argue the questions. The fair hearings decide many questions of fact. They can be scheduled near to where people live and do not have to be held in a court house.

If the welfare or school people know a lot about these matters, why are there hearings at all? Because the lawmakers realize that the only way to keep those people in schools and welfare departments from making interpretations of rules and decisions that harm people is to give the people who are entitled to these services from the government a chance to hear the reasons for the decision against them and to give their own side.

Court hearings are expensive. Fair hearings are close to home and not expensive for people to request.

THE PUBLIC HEALTH SERVICE

The Public Health Service gives this justification for not paying the medical bills of Navajos who live off of the Reservation. The law says that they should service all Navajo people. Do you think that Mr. Hatheway's explanation is sufficient? Should the PHS be sued in court for not obeying this law?

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Public Health Service
Health Services and Mental Health Administration

February 25, 1971

Mr. Geoffrey Sloan
Law Clerk
Dinebeiina Nahiilna Be Agaditahe
P.O. Box 765
Tuba City, Arizona 86045

Dear Mr. Sloan:

I regret the delay in answering your letter of January 27. If I understand your letter correctly the family had been living off the reservation nine years. If this is the case, we cannot pay the bill. I hope the following information will help clarify our policy on not paying for the medical care of Navajo Indians who have resided outside the Navajo Area for more than one year.

The Indian Health Service has a limited amount of funds to pay for medical expenses incurred by the Navajo people who receive treatment from sources other than the Indian Health Service. These funds are appropriated primarily to pay the expenses for medical needs of the Navajo people living on the reservation and authorized by Indian Health Service officials in those instances where Indian Health facilities are overloaded and the patient must, therefore, be sent to another facility, to take care of medical needs for patients requiring specialty care not available in Indian Health facilities, to take care of accident cases requiring immediate care in non-Indian Health facilities on the periphery of the reservation and Indian students attending college on Government or Tribal scholarships in cities adjacent to the reservation.

Beyond these primary expenditures the Indian Health Service authorized payment for medical care for the Navajo people in other categories to the extent that funds are available. These other categories include migrant workers, off-reservation Navajo people unable to pay their own medical bills and having no other resource available to them for this purpose such as Medicare-Medicaid, V.A., State Welfare, etc., and reservation Navajos temporarily travelling off-reservation requiring medical aid due to illness or accident.

Unfortunately, the payment for medical expenses for Indian people in these latter categories have, over the years, been extremely erratic depending strictly upon fund availability at the time payment is requested.

We have in past years requested additional funds in our budgets to enable us to take care of migrant workers but to date we have been unable to secure increases for this purpose due most probably to the continued necessity for Congress to economize on government spending.

The Indian Health Service will continue to pay for medical expenses for the Navajo people to the extent possible, however, we do not have authority to exceed the funds allocated for this purpose consequently we must regretfully refuse payment for migrant workers and other lower priority cases until sufficient funds are made available to meet these needs. It should be noted, however, that the Indian people are entitled to the same rights and benefits as other American citizens and there are other resources available to some of the Indian people to defray medical expenses such as those resources mentioned earlier in this letter.

It is an extremely difficult decision to refuse to pay for medical care for the Indian people and you may be assured that we will continue to pay for as much medical services as our funds will allow, but when our resources are exhausted we have no alternative but to refuse payment.

If there are any further questions in this regard, please do not hesitate to contact this office.

Sincerely,

/s/ Edwin S. Hatheway
Edwin S. Hatheway
Chief, Financial Management
Branch

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HELPING YOUR PARENTS GET THE WELFARE MONEY OR FOOD STAMPS OR COMMODITIES THAT THEY HAVE A LEGAL RIGHT TO RECEIVE

Many parents and older people need help from the BIA or from state welfare or want to get food stamps or surplus foods; but they have heard that this is charity, and everyone knows that charity is not something that you can demand. They also feel ashamed to ask for these things if they are not offered.

As students of law, you know and understand that welfare money is a legal right for poor people. But, because the welfare departments make mistakes, poor people must often go to the correct place and speak out. They must go above their caseworker or the first person who interviews them. But they do not know where to go and how to get there.

The young Navajo student can listen in his community and among his relatives for complaints, and then help people to find the correct place to speak out.

How many of these complaints have you heard? "My welfare check was cut off. I got a paper that said so." "They said I could not get a BIA check because there was migrant work, but I can't travel that far for a job." "They said I was in good health, and so denied my check, but the doctor said I could not work." "They reduced my check, even though my kids go to school around here and live at home," or, "even though my children come home each weekend." "They turned down my application for food (or food stamps or welfare)." "They said that I had too many sheep, so my income was too high. I told them I hadn't been able to sell any wool, but they wouldn't listen." "I asked my caseworker for emergency money, but she said it would take many months because of the computer." "My caseworker said that, because they made a mistake and gave me too much money, they would not pay me checks until they got that money back." "My caseworker said that my boy's money for jobs after school should go to my income, so I can't qualify."

Every complaint made in the home or at a chapter meeting like this is important, but will not help unless it is made in the right place and in the right way.

People who complain have legal rights to speak against the way they are treated by the welfare department.

CIVIL RIGHTS AND THE TREATMENT OF NAVAJO PRISONERS: Some Testimony About Gallup

Mr. CREECH. You mentioned also in the same statement that probably this is the case, the Indians are subjected to police brutality in places like the Navajo border towns. I wonder if you would care to give us any specification here with regard to the towns and the individuals upon which you base that information?

Mr. ABEYTA. Yes, on one occasion we understood about 4 or 5 years ago there were a group of Navajos in prison here in the city jail.

Mr. CREECH. What city is that?

Mr. ABEYTA. The city of Gallup. And they were assigned to pick pinons in Colorado, and they were sent up there in stock and cattle cars. We did not like that noise. We were disturbed. If that is the case, I don't know if that has been corrected or not. I also understand at one time that some Navajo was chained to a lamppost over here in Gallup...

Mr. WATERS. Yes; tnat [time where people were sent in cattle cars to pick pinons] is where the rancher paid their fines on the condition they come up and work on his property.[1]

1 U.S. Senate, Subcommittee on Constitutional Rights of the Committee on the Judiciary. Hearings, Constitutional Rights of the American Indian. Part 2, 87th Cong., Ist Sess., November 25, 29, and December 1, 1961. Testimony of Mr. Abeyta speaking for Governor Jojola of Isleta Pueblo. p. 428.

Note to Teachers

Obtain the booklet American Indian Civil Rights Handbook, Clearing House Publication No. 33, United States Commission on Civil Rights, Washington, D.C., 3/72.

HUMAN RIGHTS AND THE LAW

Most states have a human rights commission or some comparable state agency to investigate and to correct discrimination based upon race. Some of these commissions exist on paper only. They may receive very little money to do the job. Others are more serious.

The law and its application are always two different matters. The application of the law may be controlled by politics until a lawyer and a person who wants to work get a court order for it to function fairly for all people.

But even a court cannot add money to a human rights commission, and money kept from its budget by its opponents may be the only reason why a state or federal agency that is supposed to help Indians, or migrant workers, or consumers does not do its job. The only people who want to work for an agency that does not really do its job are people who are willing to be paid for sitting behind any desk for eight hours just to get a pay check. Navajos and other Indians have had sad experiences with people like these.

The New Mexico Human Rights Commission is a good example of a state agency that investigates problems and that has important functions. At least as the law is written, it shows what a state agency can do if it is serious about seeing that groups or individuals do not base their decisions on dislike of blacks, chicanos, or Indians when they rent motel rooms, hire people to work, or serve food to the public.

The New Mexico Human Rights Commission has five members, appointed by the governor. This administrative agency makes rules which are designed to do away with discrimination in jobs, hotels and motels, and in the renting or selling of housing.

These rules are made only after they have been published in the paper, and public hearings are held to let people say what they think about them.

Similar hearings are used by many state agencies, such as ones that make rules about the rates for telephones or electricity, or that decide about things that will affect the environment. Congressmen and senators and state representatives also have hearings on bills that are later voted on to become laws. These hearings are open so that any people who have something to say can say it.

For example, there were hearings about the Indian Civil Rights Bill as far back as 1964, when senators sent people who worked for them out to interview Navajo people and members of other Indian tribes. Hearings allow all sides of a question to be talked about.

Suppose you hear about an administrative rule or law that will affect your telephone or propane gas bill and make it higher. You feel that the service of the telephone company has not been very good. The lower rates given to people who make calls without using the operator are not available to you, because you have to use the operator, no matter what, when you call any distance. The telephone company does not bring telephone lines out to your hogan, and it doesn't bother to fix broken lines out in the country anyplace very fast. You do not think higher rates are deserved.

But can you take the day off and drive to Santa Fe to let people know what you think? If you or your father speak Navajo only, will you be able to go there and make the members of the commission or the lawmakers understand your side of the question? Even if you do go, will the hearing representatives ask you if the point of view at Ramah or Torreon or Twin Lakes is really representative of all the Navajo people? That question is hard to answer. The lawmakers or the rule makers at the hearing may say that they will only accept the opinion of the Eastern Navajo Council or of the Chairman at Window Rock. It may be that the Chairman and his advisors do not have any opinion on something that is important to you.

The telephone company or the gas company will be able to pay people to testify at hearings to persuade the people there that the company's side is the right one. Lawyers hired by them may argue their side of the question. Does

this mean that there is no other side? No; it only means that the other sides do not have spokesmen or lawyers to testify for them.

If the Human Rights Commission is making rules to stop motels and hotels from refusing to allow Navajos to take rooms there, the hotels and motels have associations that will hire attorneys to argue in ways that will reduce the penalties for discrimination, or see to it that the hotels and motels have to spend less money to obey the rules. These attorneys or other representatives of special interest groups are called lobbyists.

Lobbyists are people who speak for the side of special interest groups, and are usually paid to do that. These people not only testify in hearings, but also speak outside of the voting chambers or the hearing room or at social gatherings to lawmakers. Many lawmakers do not have any point of view about a particular issue. Many rules and many laws come before them for a vote, and they may know next to nothing about many of them. They are open to information before they make decision on how to vote. But the only information that they receive may come from the side that can afford to have lawyers and experts present it. They may learn about that side only. You might argue that they should find out about the other side, but busy people cannot always do this.

There are other considerations, as well. The lawmakers consider how many votes the interest group represents. If they feel, for example, that the telephone company's employees who want pay raises are all behind the raise in rates, this will be very important to them. They may decide that the telephone company employees (the operators, the linesmen, and even the people from whom the telephone company buys wire and new telephones and telephone poles) will hear about their votes and will vote for or against individuals or political parties because of the decisions that they make. This may persuade them to favor the telephone company when they come to vote.

The lawmakers might say, "Well, it may be true that the telephone company is not fair to Navajo people, but this problem is not so important that Navajo people from the Eastern Navajo Agency will get together and vote against me or my party because of it." Or they may simply think that Navajo people do not register or vote

very much in New Mexico state elections anyway; or if they do, that they listen to the trader or the chapter president who supports their party. "If we give them a new road, or some water, that will be enough."

They also think about who contributes campaign money to them and to their party to pay for ads on radio and television and in print. The big companies and their officers make these contributions. Most poor Navajo people cannot afford to do this.

Are lobbyists bad? Are interest groups bad? The military men, the Indian Ring (people who sold supplies of bad quality to the government to give reservation Indians), the missionaries, and the land and gold grabbers are all interest groups that influenced the treatment of the American government to Indians. The harm that they did, and that their lobbyists in Congress did, will never be repaired.

And yet it is not fair to put a tag of "good" or "bad" on interest groups and lobbyists in general. It is a fact that there are people with certain interests who will spend time and money to get the government to favor them over others.

During the great conflicts between the Army and Indian tribes, the Indians of different cultures and different religions found that making a common defense against the white man was reason enough to forget their inter-tribal differences. The Anglo truckers may compete for the same customers, but they are the first to recognize that laws that tax them are reason enough to work together to keep these taxes low.

In a tribe as big as the Navajo Tribe, there are many points of view. But on some problems the people can see good reasons to work together.

Because the industries and big corporation are so powerful, a balance between public and private interest groups has never really occurred in the United States. But today, many private citizens are worried enough about our country and its problems to work together for specific changes. One group of people working together today are called "environmentalists." Some Anglos now have the same concerns that Indians had many years ago when Anglos were interested only in grabbing land or the mineral wealth from the land. These people may vote for different political parties. But on the issue of the condition of the

air, the land, and the water they are willing to put the small amount of money and labor that each person can give together to see to it that laws are passed by the state legislatures and the Congress, and that administrative rules are made that are good for the environment.

The power companies and the real estate speculators (the people who divide up and sell pieces of land without water to people from out of state who think that desert land is a good investment or a good place on which to retire) are still powerful, but a balance in interests is now taking place.

How can Navajo people organize to promote their interests? This is a question that you must ask now, and in the years to come.

Suppose John Yazzie goes to Gallup and tries to get a room in the Yucca Motel in order to watch a basketball game on television. The owner refuses to rent to him although he has the money to pay for the room. Within ninety days, John should put in a complaint giving the facts to the Human Rights Commission. The motel is a "public accommodation." The rules say that no public accommodation can refuse its services because of a person's ancestry. He can get help from a lay advocate or lawyer in making out this complaint.

A person has a right to complain if he is treated this way when he asks to be listed for work by the state employment commission or by a private agency, or if he applies for a job or membership in a union. If, for example, he wants to do work in Gallup and is qualified to do it, and the only jobs offered to him are migrant work, because the employment office is only interested in filling its quota of Navajos to pick sugar beets, then he has a right to complain.

The main question is this: was he treated the way he was because he was Navajo (apart from his ability to pay for food or lodging or general qualifications of work)?

The Commission will investigate. If they think other reasons caused him to be treated the way he was, they may dismiss the complaint. John Yazzie can ask for a hearing to reconsider the dismissal ten days after they notify him. If the complaint is valid in the

opinion of the Commission, it attempts through persuasion and conciliation to straighten the matter out. This way of working is informal and private. It does not publicly embarrass the racist motel owner, as long as he agrees to rent the room; and it does not publicly embarrass the racist employment agency, as long as they are willing to give a person a proper chance for a proper job.

Someone might argue that this process should be public, in order to inform other Navajos who have been turned away from the Yucca Motel or who have heard that the Yucca Motel does not rent rooms to Navajos that it is now possible to get a room there. But the lawmakers had other interests in mind when they made the law to keep matters private. Other interest groups had their points of view placed in the law.

If there is no agreement by private persuasion, then the Commission has a hearing and orders the motel owner to appear. It can get the local district court to order no further discrimination if it thinks that is the best thing to do to correct the situation.

After hearing evidence and keeping a record, the Commission makes a decision which can be appealed by whichever side loses. The Commission can require that the motel manager not discriminate further and that he report on whether or not he is obeying. It can also require that he pay Mr. Yazzie actual damages up to $1,000.

Mr. Yazzie's actual damages would be his expenses in this case, his lawyer fee, and a fair amount for the time and money lost in not getting the room. In all, they would not be very much. The time and effort that Mr. Yazzie spends would not really be paid for--there's no way to figure the price of missing a football game in a motel room. This weak penalty clause shows again how strong are interest groups for public accommodations.

The law says that a notice about this human rights law should be in every public accommodation. Look for a poster the next time you are in a hotel, motel, restaurant, or employment office. You can report the place that does not have one.

HABEAS CORPUS

A writ of habeas corpus is a paper that asks that a jailed person be brought into court before a judge and told the reason he's being held in prison. If there's no good reason, he has to be set free. This is an old legal action that dates back to English law.

The writ filed in this case charges that the tribal judge is not applying a recent ruling of the Supreme Court that says that to jail a man just because he can't pay a fine, while freeing a man with money who can pay, is unfair to poor people and a violation of the Equal Protection Clause of the Constitution and of the Indian Civil Rights Bill that applies to Indian courts.

Read the petition.

PETITION FOR A WRIT
OF HABEAS CORPUS

TO THE HONORABLE CHIEF JUSTICE OF THE COURT OF APPEALS, WINDOW ROCK, NAVAJO NATION.

Plaintiff alleges:

I

Petitioner, _____, is a prisoner detained, confined, and restrained of his liberty by the jailer of the _____ jail located in _____, Navajo Nation.

II

Said imprisonment is illegal and the illegality thereof is this, to-wit: Prisoner without the advice of counsel pleaded guilty to the violation of Disorderly Conduct in the Trial Court for the Judicial District of Shiprock on the _____ day of _____, 1971. Said prisoner was sentenced in accordance with the Navajo Tribal Code, Section 17-908(b) to $25.00 fine or 15 days in jail. Said prisoner informed the Court that he was poor and that he was unable to pay the fine in a lump sum because of his indigence. The prisoner was allowed credit in the amount of $2.00 per day, but because he was poor and unable to pay the fine he was remanded to said jail.

III

In Tate v. Short, 39 L.W. 4301 (1971) the Supreme Court of the United States has held that it is a denial of equal protection to limit punishment to payment of a fine for those who are able to pay it but to convert the fine to imprisonment for those who are unable to pay it. The situation of the prisoner is equal to that of the Plaintiff Tate. His imprisonment is violative of the 5th and 14th Amendments and that they prohibit the imprisonment of a prisoner because he is too poor to satisfy a fine with a similar payment to the court.

IV

The Tate decision is applicable to the institution of the Navajo Tribe because of the Indian Civil Rights Bill of 1968, 25 U.S.C.A. Section 1302(8) states as follows:

> No Indian Tribe in exercising powers of self government:
>
> > (8) deny to any person within its jurisdiction equal protection of its laws or deprive any person of his liberty or property without due process of law.

The Navajo Tribal Code, Title 17, Section 908(b) under which the prisoner was sentenced was unconstitutional on its face to members of the Navajo Tribe of Indians who are unable to pay fines meted out by the Tribal Code forcing them to serve prison terms because of their impoverishment.

V

Said prisoner is not held by virtue of any other complaint, warrant, rule or regulation, or any other arrest or confinement other than as specifically set out hereinabove.

VI

The prisoner is not committed nor detained by virtue of the final judgment, as the denial of his constitutional rights as set forth has deprived the court of its competence to imprison Defendant.

VII

No other application for a writ of Habeas Corpus has been made by or in behalf of said prisoner in regard to said restraint.

WHEREFORE, Petitioner prays that a Writ of Habeas Corpus be granted and directed to said jailer of the _____ jail of the _____ jail commanding him to have the body of petitioner _____ _____ before your Honor at a time and place therein specified to do and receive what is to be considered by your Honor concerning him, together with time and cause of his detention, and that he be returned to his liberties.

AND FURTHER, Petitioner prays that pending a decision by this Court on this petition that prisoner be released to the custody of his family or in the alternative by admitting him to bail cognizant with the severty of his offense, petitioner's roots in the community and his financial needs.

Dated this _____ day of _____, 1971.

MAKING RULES AND LAWS FOR STUDENT CONDUCT IN SCHOOL AND IN THE DORM

What rules of conduct are fair for students in the school and in the dorm? What kinds of rules are necessary? What kinds of rules are wrong?

Some kinds of rules are necessary to protect the rights of all students in the school to get an education and the property of the school that belongs to the entire community. What kinds of rules are these?

Some kinds of rules are necessary because students are the responsibility of the school administrators when they are in school and when they live in the dormitory. What kinds of rules are these?

The school administrators have a legal responsibility to act for the parents when the law requires that children go to school and when the parents agree to let their children live in the dorm instead of at home.

When rules are applied, the actual facts of the situation involving the right to speak, dress, or write are reviewed, and several tests are applied:

A good test: Has substantial disruption of the educational process in fact happened?

A bad test: Is it reasonable to assume that the activity will result in material disruption?

Why is the first test better than the second? The first test only prohibits students from speaking their mind on controversial topics or hearing speakers with unpopular ideas or dressing the way they want or writing and distributing papers in the school when they really do cause a problem that stops other students from learning or that endangers students.

The burden of proof is placed upon school officials when they try to abridge the personal and individual rights of students to speak, dress, and write as they please.

Problem: Two students write a leaflet about "red power." They want to hand this leaflet out between classes. The school principal says that he must read and

approve it first. Is this correct? No; this is a prior restraint upon freedom of speech as guaranteed by the First Amendment of the United States Constitution. The courts have held that students, like other citizens, have constitutional rights and do not leave them at the schoolhouse door.

The boys decide to get up in each class and make speeches. They start with the math class. The teacher cannot give the lecture she had planned. She tried to start, but the boys will not let her speak. Is the conduct of the boys correct? No; there are other opportunities for the boys to give the speech, when it will not disrupt the classes. The school officials should help them find an empty room and allow them to give the speech between classes or at lunch time.

Rules and Conflicts in the School and in the Dorms

Students bring to school their legal rights, guaranteed to them as citizens of the United States and of the state they live in. Their attendance at school is a legal duty. Their public school education is a legal right.

The teachers and administrators of the schools and dormitories have legal duties to protect the health and safety of the students and to provide an atmosphere for the educational process. Some of these duties are taken over from parents and guardians of the students who are left at home. Some are the specific requirements of their jobs.

The rules of conduct for schools and dormitories should promote the accomplishment of responsibilities of teachers and administrators, while at the same time not infringing upon the individual rights of students. The rules should be clear enough so that the personal prejudices of administrators and teachers and students should not change the direction of laws on a day-to-day basis. They should be broad enough so that an administrator or teacher or student can use his professional competence or good sense in their fair and just application for the majority of problems that come up.

In short, people should have a good understanding of their rights and responsibilities in the majority of cases.

There is no law that is perfect and that can resolve conflicts by itself. People apply laws. People act according to them. Two people, a student and a teacher, for example, can both view a law and come to two different opinions about the way they should act.

For this reason, schools and dormitories should have procedures to allow a third person to weigh the merits of each side and to make a decision when a conflict arises, especially a conflict that may result in the loss to the student of his opportunity to live in the dorm for long or for short periods or to go to a school. Suspension and expulsion can be serious losses to the student when he enters the job market. They can affect him in ways worse than sentences in jail. The bad marks against him in a student record can follow him all through life and jeopardize his later career.

Because of this, the consequences of conduct that is considered bad by teachers and administrators are taken seriously by the courts. They have directed that due process should be applied in schools and in dormitories.

Read the Indian Commissioner's suggestions about a hearing for students who may be suspended or expelled. What is wrong with them?

UNITED STATES DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs
Washington, D. C. 20242

Memorandum

To: All Area Directors

From: Commissioner of Indian Affairs

Subject: Interim Procedure for Student Expulsions

Our Office of Education Programs has recently begun a long-range study of Student Rights and Responsibilities. Although at a preliminary stage, the study is revealing the magnitude of our responsibility to students enrolled in Bureau schools. This, together with practices currently used in the discipline of students, gives rise to serious questions which reflect unfavorably upon our educational program.

I am particularly concerned that these practices may seriously infringe upon students' constitutional rights. Specifically, it is my immediate concern that stated and practiced Bureau policy relating to student expulsion, do not adequately protect the rights of students.

Careful adherence to the principles of democracy is nowhere more vital than in our educational program. Recent court decisions confirm and clearly specify that this is a responsibility of educational institutions.

In order to conform with the principle of due process, I am directing that, effective immediately, the following procedure be applied in all student expulsion cases.

I. Within 24 hours of an incident resulting in charges against a student or students, wherein the school administrator believes that the only resource is to suspend or expel the student or students involved, the school administrator shall:

   A. Provide the student or students with oral and written notification of specific charges against him. The notice shall further inform the student that should he or she so desire, in the interest of fairness, a hearing on said charges will be held within ten (10) days.

In addition, the administrator shall inform the student that an advisory will be made available to assist him (student) in the hearing; he (administrator) will advise students' parents of the charges and hearing, and he (administrator) will arrange for the student to privately discuss the matter with his parents, via telephone, if physically possible.

B. Under separate letter, provide parents with information regarding said charges and any pending hearing.

It shall also be the administrator's responsibility to request that the parents, or their representative, attend the hearing.

C. Provide the Area Director, and Director of Education Programs, Central Office, full details surrounding the incident and resulting charges against the student or students.

Notification to the Area Director and the Director of Education Programs shall be by telephone and memorandum. Copies of notification letters to student and parents shall be attached to memorandum.

II. The Area Director shall proceed immediately to:

A. Arrange a reasonable time, date, and site for a hearing of said charges before an impartial and qualified hearing panel.

B. Obtain advisor for student or students.

C. Appoint a five-member hearing panel, to be composed of representation from at least five of the following organizations: Advisory School Boards, Tribal Councils, Area Education Office, Central Education Office, student body, school staff, local tribal organizations, local social service and counselling agencies, and local law enforcement officials.

Each member shall have one vote, excepting the chairman. Chairman shall vote only in the event of a tie.

D. Inform the school administrator and the Director of Education Programs by telephone and memorandum of:

1. The time, place, and site for hearing.

2. Names of advisor for student and the hearing panel.

E. Conduct hearing and provide to the panel any instructions required for hearing.

F. The hearing panel shall, upon completion of hearing, enter into a final decision based upon evidence presented.

G. The hearing panel shall prepare and submit a detailed report of the hearing to the Area Director and Director of Education Programs.

H. Within fifteen (15) days after hearing the student or his parents may appeal the decision of the hearing panel in writing to the Commissioner of Indian Affairs. The Commissioner shall then arrange for a review of the action and may reverse or confirm the action. The Commissioner shall render his decision within fifteen (15) days of the receipt of the appeal.

III. When in the opinion of the Superintendent that the retention of a student on campus or in the school will endanger the health and/or safety of other students:

A. He may immediately expel the offending student.

B. When a student is to be immediately expelled under these emergency circumstances, the Superintendent must clear the expulsion with an emergency expulsion committee consisting of the head of the academic department, the head of guidance, and himself.

C. When a student is expelled in this manner, he or she and his parents will be afforded an opportunity for a hearing within fifteen (15) days of the expulsion in accordance with hearing procedures established in Section II above.

It is my intent that this be an interim procedure, pending the development of comprehensive guidelines for handling all disciplinary actions.

I shall expect professional discretion of the highest quality in the application of this procedure. Further, I am depending on all education personnel to protect against the use of fear, coercion, or any other psychological or physical intimidation which might force a student to leave school or engage in a social behavior which could result in expulsion.

SIGNED: Louis R. Bruce
Commissioner

1. While the Indian Commissioner states that students should have oral or written notice of specific charges, wouldn't it be better if they knew the rules before they broke them? Rules should be created by students and teachers working together so that they are understood by everyone. They should be written out and made available to everyone before they are broken. While rules should be applied with some understanding of the facts, they should not be too vague. "Conduct unbecoming a student" or "conduct against the best interests of the school" are too vague.

2. Is the role of the advisor to help the student admit guilt or to explain how he can answer the charges? Being charged does not mean that someone is guilty.

3. Why should the advisor be connected with the school? Would a lay advocate or lawyer be better?

4. The parents and the student should be made to understand how the hearing works, and they should know what proof (testimony, etc.) will be presented, so that they can prepare.

5. Members of the hearing panel should be able to be disqualified if they are prejudiced and cannot act to properly weigh the evidence on each side. They should be able to be independent of the school that brings these serious charges, as well as independent of the student and his parents.

6. The school should meet the cost of transportation for the parents, and the cost of paying the representative of the student.

7. The student should have the right to remain silent at the hearing if he wants to, without penalty. His representative should have the right to present witnesses and evidence and to cross-examine the people who speak against the student. No evidence should be presented that he does not hear.

8. A record should be kept of all the evidence and testimony and things that are said at the hearing.

9. The report of the hearing panel should include conclusions to show what evidence caused them to reach their decision.

10. Copies of the record and the detailed conclusions should be given to the student, parents, and the student's legal representative.

Why do you think the BIA should add these other things to its guidelines?

Problem: Harold did not cut his hair for six months. It was pretty long. The principal was afraid that people would tease Harold about it. He told him to cut if off. Harold said he grew it long because the protesters against the war in Viet Nam had it long. He had seen this on television. This made the principal very upset, because he knew that the school board supported the president and his stand on the war. He told Harold to get out of school and not to come back until his hair was cut. Who is right?

First, let us consider why the principal is concerned. He says that he is afraid that the kids will tease Harold. Is this really so? Have the kids teased other boys with long hair? What happened then? Were there fights? Did the educational process in the classroom get interrupted? Were people hurt? Were the fights or teasing something that the principal and teachers could not stop easily? Why not?

The principal may say he is concerned about the general health and safety of his students. He may be using this as an excuse to enforce his personal dislikes

for "hippies." His personal opinion may be from television or the magazines. It may have nothing to do with the way Harold acts. By asking more questions at a hearing, a judge or another person can find out exactly why the principal is worried.

Questions separate a decision based upon the principal's legal responsibility to protect the students and the school from disruption from the principal's own personal prejudices.

The principal will give testimony along with other school personnel about incidents where long hair caused disruption. These people will be cross-examined by a representative of the student to see that the incidents are really connected with long hair or other conduct, or dress.

The second reason why the principal did not like long hair was because it was a "symbol of protest." He is afraid of what the school board will say, because they support the war.

The student has a legal right to express his political opinion in ways that do not actually disrupt the class or school activities. Long hair might be one way. A black armband might be another. This is not a right that the principal can take from a student simply because his view is in the minority or unpopular. This view of the principal does not relate to the safety or health of the student, but only to a political opinion that his employers do not like.

Even the school board cannot remove a student who has a political opinion they do not like. This does not mean that long hair is usually a symbol of political protest. In many cases it is no more than an expression of individual personality. In these other cases, it is not protected as a right to free speech is. But Harold would still be protected against punishment without an opportunity to tell his own side and without his right to due process.

Can a rule say that everyone must look alike? Perhaps. In the military academies this can be done, since it is one of the conditions of being admitted. But in public schools, it cannot be a condition.

It is the responsibility of faculty and administration to decide when a situation requires a limit on freedom for the purpose of protecting the students and the school from harsh consequences. In exercising that responsibility, certain fundamental principles should be accepted in order to prevent the use of administrative discretion to eliminate legitimate controversy and legitimate freedom. The principles are:

1. A recognition that freedom implies the right to make mistakes and that students must therefore sometimes be permitted to act in ways which are predictably unwise so long as the consequences of their acts are not dangerous to life and property, and do not seriously disrupt the academic process.

2. A recognition that students in their schools should have the right to live under the principle of "rule by law" as opposed to "rule by personality." To protect this right, rules and regulations should be in writing. Students have the right to know the extent and limits of the faculty's authority and, therefore, the powers that are reserved for the students and the responsibilities that they should accept. Their rights should not be compromised by faculty members who while ostensibly acting as consultants or counselors are, in fact, exercising authority to censor student expression and inquiry.

3. A recognition that deviation from the opinions and standards deemed desirably by the faculty is not ipso facto a danger to the educational process.

STUDENT RIGHTS

The BIA Schools and Dorms and Their Legal Responsibility

In the letter that follows, from an attorney to a United States Congressman, a bad example of the failure of the BIA to take its responsibility seriously is given. It resulted in the death of two Navajo brothers.

The Federal Tort Claims Act provides for a legal remedy and way for the parents of the boys to get damages.

In this case, the attorneys who took the case also made a mistake. They did not file a civil complaint in Federal Court against the Bureau of Indian Affairs until the legal time to do so had passed (that time is regulated by the statute of limitations). In this case, the Navajo father may also get damages from the attorneys if he proves that there was no good reason for their failure to bring the lawsuit in time. This failure stops the Navajo man from suing the BIA for its alleged misconduct in not undertaking its own stated policy for looking for young students who have run away. The action against the attorneys is called a malpractice action. It is a civil action.

The lawyer who wrote this letter wants a Congressman to pass a private bill to give the Navajo father some money for the loss of his boys. A private bill is just like other laws passed by the United States House of Representatives and the United States Senate and signed by the President into law, except that it directs the United States Treasury to pay tax money directly to a private citizen for some act on the part of the federal government that cannot easily be fixed by the courts.

Read the letter, and discuss the following:

Should the BIA or other school officials have responsibility for the safety of students placed in their care by parents when the students run away? What should they do?

Honorable John Smith
United States House of Representatives
Longworth House Office Building
Washington D. C. 20515

ATTENTION:

Dear Congressman Smith:

The office of legal services has asked me to send you information concerning the case of three boys from Chaco Canyon, New Mexico, who ran away from the Crownpoint Boarding School in January of 19__. As you know, two of the boys froze to death, and one required extensive hospitalization.

The facts of this case occupy a voluminous file, a copy of which I enclose. It is brought to your attention because the facts of this case indicate that boarding school officials were grossly negligent in attempting to find the boys, despite their history of running away and the severe weather conditions existing during this period. Although it appears that a suit was indicated pursuant to the Federal Tort Claims Act, our office was required to refer the case to private attorneys as fee-generating. Although I was not working in this office at the time the case was referred, records indicate that a law firm in New Mexico, accepted the case, but neither worked on it nor returned it for fifteen months, until the statutory time for filing such a claim had run. It is our hope that this shocking story will at least result in a private bill compensating the father of the boys for his loss. Our office, with the assistance of Mr. John Doe, has been attempting for the past year to have such a bill introduced in Congress, but three years have now elapsed since this tragic event occurred. We would hope that a bill would be introduced that would not merely allow litigation to once again be possible, for the only testimony would come from memories clouded with time, and thus perhaps unable to bear the burdens of proof.

I will summarize the file from my own examination of it in the following ways:

First, officials at the boarding school in Crownpoint were charged with a responsibility for young children in a difficult, foreign environment. In the case of the Begay boys, the indications were clearly

that the boys had not adjusted well, and the staff knew this. The affidavits, time and again, indicate that the boys were homesick. They cried frequently and had attempted several previous escapes. They were young and were judged to be fairly slow. When this last runaway took place, the boys had just returned from an extended holiday at home and were clearly unhappy to be back. Once it was realized the boys were missing, it should have not taken long to determine that they had attempted to run home. But boarding school officials did not even have their correct home address.

Second, the weather conditions at this time were very severe. Much snow was on the ground, roads had just begun to become passable, and temperatures at night were subzero. The boys took with them, whether or not the boarding school attendants knew this, only light jackets.

Third, and most tragic, the efforts made to find the boys were shockingly inadequate under these circumstances. Several of the head boarding school officials were in Window Rock, Arizona, for a meeting, and the people left in charge were either unaware of the proper procedures to take under the circumstances, or totally neglectful of them. On the morning of the discovery of the boys' absences, it appears that only one small school bus was sent out, and this in the wrong direction. The mistake apparently arose because another boy bore a similar name to the one of the three runaways, and it was toward the home of this different boy that this school bus went. Yet for the younger two boys, correctly identified as the children of Silago Begay, no other effort was made to find them.

The Navajo police were notified, although it is questionable at what time. Many of the police were out hunting for wild dongs, and it became apparent to one boarding school attendant that an inadequate effort at best was being made by them. Yet, no further search effort whatever was made by the boarding school that afternoon, after the return of the wayward bus. Finally, after dark, several search parties were sent out, but limited to their search to the road themselves. No additional assistance for the search was sought from the Eastern Navajo Agency, although we believe that an airplane would have been available for a daytime search, and we believe further that the boarding school officials knew this. Search efforts during the night were of course

fruitless, and discontinued until the following morning. A public health service doctor places the time of death from freezing at approximatel) 4:00 A.M. Saturday morning.

Many other inconsistencies and tragicomical errors exist. The father was apparently not notified until 8:00 P.M., partly because of the mistake in his address and partly because very little effort, if any, was made to get in touch with him. Ranchers who live a long the side of the road were not called, although in fact the boys passed by at least one ranch house on the way. It was hardly unexpected that the boys would seek a somewhat devious route home, to purposely avoid search parties, and yet the search was confined to the main roads, while the boys were found, ultimately, 50 yards away from the road. Only weeks prior to this incident, two little girls had run away from the same school, and had been, luckily, found in the snow alive the following morning, although they required hospitalization. In short, although only fifteen miles from the boarding school and on a relatively direct route to their home, the boys were not and could not have been found through such an inadequate search effort. They were found Saturday morning when one of the searchers finally stumbled across the youngest of the three, who led him to the bodies of his brothers. This youngest boy had apparently escaped death by sleeping between his two brothers during the night.

As I indicated previously, the case was referred to a law firm in New Mexico, in December, 19__. The statutory limitation for filing under the Federal Tort Claims Act ran in January of 19__, over a full year later. The case was not returned to us until April of 19__, at our request. The file was, so far as our attorney here could determine, utterly untouched during that entire year.

The statements enclosed thoughly highly worthwhile, are sometimes difficult reading because of the difficulties some people had in expressing themselves in English. Original handwritten statements were retyped by our own staff. Critical notations have been added to the file to assist in research.

Please retain this file carefully as it will be difficult to reassemble. Please keep me informed as to the results of your investigation and your ultimate decisions. I would point out that the case is widely known and well remembered by the people out here and that many earnestly hope that Mr. Begay receives some consolation for his loss. Thank you very much for your utmost attention to this matter.

Sincerely,

Attorney at Law

BIBLIOGRAPHY

Aberle, David F., The Peyote Religion Among the Navajo, New York, Viking Fund Publications in Anthropology, No. 42, Wenner-Gren Foundation, 1966.

---- The Navajo Singer's Fee: Payment or Prestation, The Hague, Studies in Southwest Ethnolinguistics, 1967.

Brown, Dee, Bury My Heart at Wounded Knee: An Indian History of the American West, New York, Holt, Rinehart & Winston, 1970.

Brugge, David M., "Navajo Land Usage: A Study in Progressive Diversification," in Clark S. Knowlton, ed., Indian and Spanish American Adjustments to Arid and Semi-Arid Environments, Lubbock, Texas, Contrib. No. 7 of the Comm. on Desert and Arid Zone Research, Texas Technological College, 1964.

Conn, Stephen, & Reichbart, Richard, "The Trading Post," in Dan Vicenti, Leonard Jimson, Stephen Conn, M.J.L. Kellogg, The Law of the People, Vol. I, Ramah, New Mexico, Ramah Navajo High School Press, 1972.

Davis, Lawrence, "Court Reform in the Navajo Nation," Journal of the American Judicature Society, August, 1959.

Dyk, Walter, Old Mexican: A Navajo Autobiography, New York, The Viking Fund, Inc., 1947

-----Son of Old Man Hat, Lincoln, Neb., University of Nebraska Press, 1966.

Euler, Robert C. and Dobyns, Henry F., "Ethnic Group Land Rights in the Modern State: Three Case Studies," Human Organization, 20:4, 1962.

Fonaroff, L. Schuyler, "Navajo Attitudes and the Indian Reorganization Act: A New Document," Plateau, 34:3, pp. 97-100, 1962.

Funk, Elizabeth C., "An Approach to the Study of Non-Literate Law in Three North American Societies," unpublished Master's dissertation, University of New Mexico, 1934.

Gilbert, William H., and Taylor, John L., "Indian Land Questions," Arizona Law Review, 8:1, 1966.

Gilmor, Frances and Wetherill, L.W., Traders to the Navajos, Albuquerque, New Mexico, University of New Mexico Press, 1965.

Hagan, William T., Indian Police and Judges: Experimentation in Acculturation and Control, New Haven & London, Yale University Press, 1966.

Hassell, Sanford W., "A Trader Views the Navajo," El Palacio, 48:6, pp. 146-7, 1941.

Hassell, Sanford W., "Navajo Justice," Desert Mag., 14:3, pp. 21-22, January 1951.

-----"When Wealth Came to Hosteen Little Whiskers," Desert Mag., 14:4, pp. 28-29, February 1951.

---- "Attaki Spends His Poker Winnings," Desert Mag., 14:6, pp. 17-18, April 1951.

---- "When Little Whiskers' Pension Check Came," Desert Mag., 14:8, pp. 22-23, June 1951,

---- "When Visitors Came to the Hogan," Desert Mag., 14:12, pp. 17-18, 1951.

---- "Do Ah Shon Goes to the Trading Post," Desert Mag., 14:11, pp. 21-22, September 1951.

----"Big Talks 'Borrows' the Trader's Ax," Desert Mag., 14:13, pp. 19-20, November 1951.

---- "Kayba Sells Her First Rug," Desert Mag., 15:1, pp. 25-26, January 1952.

---- "Mrs. Onegoat Weaves a Rug, Desert Mag., 14:8, pp. 23-24, July 1951.

Hill, Willard W., "Navajo Trading and Trading Ritual," Southwest Journal of Anthropology, Vol. VI:371-96, 1948.

---- "Field Notes," unpublished, compiled in the 1930's.

Hodge, Carle, and King, William S., Indians and the Law, American Indian Series No. II, Bureau of Ethnic Research, Tucson, University of Arizona Press, 1958.

Hoover, Grace Elwood, "Trespassers in Mesa Land," Arizona Highways, 17:6, p. 4, 1941.

Jones, Oakah L., "The Origins of the Navajo Indian Police," Arizona and the West, 8:3, pp. 225-38, 1966.

Kane, Albert E., "Jurisdiction Over Indians and the Indian Reservations," Arizona Law Review, Vol. 6:237-55, 1965.

Kelly, Lawrence, The Navajo Indians and Federal Indian Policy, Tucson, University of Arizona Press, 1968.

Kennedy, Mary J., Tales of a Trader's Wife, Albuquerque, Valient Printing Co., 1965.

Kimball, Solon T., "Land Use and Land Tenure Among the Navajo," paper read before the 18th Annual Meeting, American Assoc. for Adv. of Science, Southwest Division, 1938.

Kiser, O.L., "Navajo Indian Family," unpublished Master's Thesis, University of Kentucky, 1937.

Kluckhohn, Clyde, "A Navajo Politician," in Joseph B. Casagrande, ed., In the Company of Man: Twenty Portraits by Anthropologists, New York, Harpor & Bros., 1960.

---- Navajo Witchcraft, Boston, Beacon Press, 1967.

Kluckhohn, Clyde and Hackenberg, Robert, "Social Science Principles and the Indian Reorganization Act," in Indian Affairs and the Indian Reorganization Act: The Twenty Year Record, Tucson, University of Arizona Press, 1954.

Kneale, Albert, Indian Agent, Caldwell, Idaho, The Caxton Printers, 1950.

Landgraf, J.L., "Land Use in the Ramah Navajo Area, New Mexico," New York Acad. of Science, Series II, Vol. XIII:77-84, 1950.

---- "Land Use in the Ramah Area of New Mexico," Peabody Museam Papers, XLII: i, 1954.

Ladd, John, Structure of a Moral Code, Cambridge, Harvard University Press, 1957.

Leupp, Francis E., "Law or No Law in Indian Administration," The Outlook, Jan. 30, 1909.

Levy, Jerrold E., "Community Organization of the Western Navajo," American Anthropologist, Vol. 64: 781-802, 1962.

Littell, Norman M., "Reflections of a Tribal Attorney," manuscript in Navajo Tribal Records Files, also in Research section, Navajo Parks and Recreation, The Navajo Tribe, Window Rock, Arizona, 1957.

Lyman, Albert R., The Outlaw of Navaho Mountain, Salt Lake City, Desert Book Co., 1963.

Matthews, Washington, "The Navaho Clan," American Anthropologist, Vol. 6:758-9, 1904.

McNitt, Frank, The Indian Traders, Norman, University of Oklahoma Press, 1962.

Miller, Edgar K., "The Indian and the Trader," Indian School Journal, 7:11-21, June, 1907.

Mideleff, Cosmos, "Navajo Indian Gamblers," Scientific American, July, 8, 1899.

Mower, Margaret, "Without Pawn....," Desert Mag., 13:9, pp. 15-18, July, 1950.

Muench, Joyce Rockwood, "Hogan Marriage," Desert Mag., 15:8, pp. 17-21, August, 1952.

"Navajo Mounted Police," Literary Digest, Vol. 118:32, July, 1934.

New Mexico Association of Indian Affairs, "The Checkerboard Area," Newsletter, October, 1958.

Parker, Seymour, "Navaho Adjustment to Town Life: A Preliminary Report of the Navahos Residing in Farmington," unpublished manuscript available from Cornell Southwest Project, 1954.

Reben, Howard T., and West, Michael G., Buyer's Guide to the Law, Boston, Cambridge and Somerville Legal Services, Inc. and Pine Tree Legal Assistance, Inc., 1971.

Reichard, Galdys A.,"Property and Inheritance," in Howard Becker ed., Societies Around the World, New York, Henry Holt & Co., 1956.

---- "The Family and Marriage," in Howard Becker ed., Societies Around the World, New York, Henry Holt & Co., 1956.

Reynolds, Terry Ray, Lamphere, Louise, and Cook, Cecil E., "Time, Resources, and Authority in a Navajo Community," American Anthropologist, 69:2, pp. 188-99, 1967.

Richardson, Cecil Calvin, "From an Indian Trader's Notebook," Arizona Highways, 17:10, p. 38, 1938.

Richardson, Gladwell, "Crime Busting Navajo Police," The New Mexico Lawman, 32:3, pp. 7-12, 1966.

Ross, William T., "Navaho Kinship and Social Organization," unpublished Ph.D. dissertation, University of Chicago, 1955.

Sasaki, Tom Taketo, Fruitland, New Mexico: A Navaho Community in Transition, New York, Columbia University Press, 1960.

---- "Changes in Land Use Among the Navajo Indians in Many Farms Area of the Navajo Reservation," in Clark S. Knowlton, ed., Indian and Spanish American Adjustments to Arid and Semi-Arid Environments, Lubbock Texas, Contrib. No. 7 of the Comm. on Desert and Arid Zone Research, Texas Technological College, 1964.

Sasaki, Tom Taketo and Adair, John, "Navaho Acculturation and English-Language Skills," American Anthropologist, 55:1, pp. 89-99, 1953.

Shepardson, Mary, "Value Theory and the Prediction of Political Behavior: The Navajo Case," American Anthropologist, Vol. 64:742-51, 1962.

---- "Problems of the Navaho Tribal Courts in Transition," Human Organization, 24:3, pp. 250-53, 1965.

Shepardson, Mary and Hammond, Dlogwen, The Navajo Mountain Community, Berkeley, University of California Press, 1970.

Stephen, Alexander M., "Marriage Among the Navajos," Our Forest Children, 4(4):222-23, 1890.

"Truth in Lending: What it Means for Consumer Credit," Series for Economic Education, Philadelphia, Federal Reserve Bank of Philadelphia.

U.S. Congress, Subcommittee on Constitutional Rights of the Judiciary, Constitutional Rights of the American Indian: Hearings pursuant to S. Res. 58, Part 4, 88th Cong., 1st Sess., March 7, 1963.

U.S. Senate, Subcommittee on Constitutional Rights of the Committee on the Judiciary, Hearings, Constitutional Rights of the American Indian, Part 3, 87th Cong., 2nd Sess., June 1,2,6 1962.

U.S. House of Representatives, Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs, Hearing, Rights of Members of Indian Tribes, 90th Cong., 2d. sess., March 29, 1968.

Van Valkenburgh, Richard F., "Navajo Common Law," Museam Notes, Museam of No. Arizona., Vol. IX: 17-22, 51-54, Vol. X:39-45, 1936 & 38.

---- "Navajo Common Law," in Howard Becker ed., Societies Around the World, New York, Henry Holt Co., 1956.

Vogt, Evon Z., and Albert, Ethel M., People of Rimrock, A Study of Values in Five Cultures, Cambridge, Harvard University Press, 1966.

Williams, Aubrey, Navajo Political Process, Washington D.C., Smithsonian Institution Press, 1970.

Yazzie, Cora Ben Gould, "Wedding," Indians at Work, Washington, D.C., Bureau of Indian Affairs, 1935.

Young, Robert W., "It (Single, Roundish, Bulky Object) Is....," Western Review, 2:2, pp. 25-26, 1965.

Young, Robert W., and Morgan, William, The Ramah Navajos: The Son of Former Many Beads, Phoenix, U.S. Indian Service, 1949.

---- The Trouble at Round Rock, Phoenix, U.S. Indian Serivce, 1952.

Youngblood, B., "Navajo Trading," A report to the office of Experiment Stations, U.S.D.A., Washington, D.C., GPO, May 1, 1935.

---- Navajo Trading, Hearings before a Subcommittee of the Committee on Indian Affairs, U.S. Senate, 75th Cong., 1st Sess., Part xxxiv, pp. 18036-115, 1937.

Zelditch, Morris, "Authority and Solidarity in Three Southwestern Communities," unpublished Ph.D. Dissertation, Harvard University, 1955.